

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Laura J. Berry 1/27/12  
Name of Case Attorney Date

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

Case Docket Number ERCRA-01-2011-0120, CAA-01-2011-0121 & RCRA-01-2011-0122

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:

Manson Companies, Inc.  
One Runway Road  
South Portland, ME 04106

Total Dollar Amount of Receivable \$ 68,100 Due Date: \_\_\_\_\_

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  
5 POST OFFICE SQUARE, SUITE 100  
BOSTON, MA 02109-3912

RECEIVED

2012 JAN 26 10 58 AM  
Reply to: (617) 918-1148  
Fax: (617) 918-0148  
Mail Code: OES 04-2

EPA ORC  
OFFICE OF  
REGIONAL HEARING CLERK

January 26, 2012

BY HAND

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

Re: *In re Monson Companies, Inc.*, Docket Nos.  
EPCRA-01-2011-0120, CAA-01-2011-0121, and RCRA-01-2011-0122

Dear Ms. Santiago:

Enclosed for filing are the following original documents, and one copy of each, relating to the above-referenced matter:

1. Consent Agreement and Final Order; and
2. Certificate of Service.

Kindly file the documents in the usual manner. Thanks very much for your help.

Very truly yours,

Laura J. Berry  
Enforcement Counsel

Enclosures

cc: Michael W. Parker, Esq. (Respondent's counsel)  
Jim Gaffey, OES, EPA Region 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1  
BEFORE THE ADMINISTRATOR

RECEIVED

2012 JAN 26 P 3:40

EPA ORC  
OFFICE OF  
REGIONAL HEARING CLERK

\_\_\_\_\_  
In the matter of )

MONSON COMPANIES, INC. )

One Runway Road )  
South Portland, ME 04106 )

Respondent. )  
\_\_\_\_\_ )

Docket Nos: EPCRA-01-2011-0120,  
CAA-01-2011-0121,  
RCRA-01-2011-0122

**CONSENT AGREEMENT AND FINAL ORDER**

Complainant, the United States Environmental Protection Agency ("EPA"), having filed a Complaint and Notice of Opportunity for Hearing ("Complaint") against Respondent, Monson Companies, Inc. ("Respondent" or "Monson"), the Parties herein, on September 8, 2011;

Respondent having received extensions to file an Answer and Request for Hearing until January 26, 2012; and

Complainant and Respondent having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order ("CAFO") without further litigation is the most appropriate means of resolving this matter,

NOW, THEREFORE, before the taking of any testimony, upon the pleading, 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:

**STATUTORY AND REGULATORY AUTHORITY**

1. This CAFO resolves an administrative action for the assessment of monetary penalties brought pursuant to Section 325(c) of Title III of the Superfund Amendments and

Reauthorization Act, 42 U.S.C. § 11045(c), also known as the Emergency Planning and Community Right-to-Know Act of 1986 (“EPCRA”); Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d); Section 3008(a) of the Resource Conservation and Recovery Act (“RCRA”); and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permit, 40 C.F.R. Part 22.

2. EPA’s Complaint alleged that Monson failed to:
  - a) timely prepare and submit emergency and hazardous chemical inventory forms to the local emergency planning committee, the state emergency response commission, and the local fire department listing the following hazardous chemicals, which were stored at Monson’s facility located in South Portland, Maine (the “Facility”), in quantities equal to or greater than the threshold level set forth at 40 C.F.R. § 370.10, in violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370: ammonium polyphosphate; calcium chloride liquid; calcium chloride; urea; urea solution; ammonium sulfate; propylene glycol; Chemstone defoamer; hydrated lime; magnesium chloride; magnesium hydroxide; citric acid; potassium chloride; sodium chloride; soda ash; sodium bicarbonate; sodium carbonate monohydrate; sodium silicate; sodium silicate GD; ABR patriot blast; ABR silica sand; ABR starblast; and ABR uniblast;
  - b) design and maintain a safe facility, in violation of the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(i), by storing the following chemicals which, either alone or in combination, are extremely hazardous substances, in Monson’s chemical warehouse without employing standard chemical storage practices,

including separation of incompatible chemicals and provision of adequate aisle spacing to allow unobstructed access by personnel and emergency responders: sulfuric acid, phosphoric acid, hydrochloric acid, fluorosilicic acid, sodium hydroxide, sodium hypochlorite, and other chemicals;

c) conduct hazardous waste determinations for several containers of chemicals identified by Monson representatives as materials that were awaiting disposal, in violation of Chapter 851, Section 5 of the State of Maine Hazardous Waste Management Rules (the "Maine Rules"); and

d) maintain an updated contingency plan for the Facility that met the requirements of 40 C.F.R. §§ 264.52 and 264.54, in violation of Chapter 851, Section 8(B)(5) of the Maine Rules and 40 C.F.R. §§ 264.51-264.56, incorporated by reference therein.

#### **TERMS OF SETTLEMENT**

3. The provisions of this CAFO shall apply to and be binding on the Parties, their officers, directors, agents, servants, employees, successors and assigns.

4. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue and, without admitting or denying the factual and legal allegations contained in the Complaint, consents to the terms of this CAFO.

5. Respondent hereby waives its right to a judicial or administrative hearing on any issue of law or fact set forth in the Complaint and waives its right to appeal the Final Order.

6. Respondent certifies that it is currently operating and will operate the Facility described in paragraph 23 of the Complaint in compliance with Section 312 of EPCRA, 42 U.S.C. § 11023, 40 C.F.R. Part 370, Section 112(r)(1) of CAA, 42 U.S.C. § 7412(r)(1), Sections 5 and 8(B)(5) of the Maine Rules, and 40 C.F.R. §§ 264.51-264.56.

7. Respondent consents to the issuance of this CAFO hereinafter recited and consents for purposes of settlement to the payment of the civil penalty cited in paragraph 27 and to the performance of the Supplemental Environmental Project (“SEP”) hereinafter described.

#### **Supplemental Environmental Project**

8. Respondent shall complete the following SEP, which will enhance the emergency planning and chemical spill response capabilities for first response agencies within the City of South Portland and neighboring areas in Maine, and which the parties agree is intended to secure significant environmental or public health protection and benefits.

9. Respondent shall provide response equipment and training, including conducting an emergency response exercise, to the South Portland Fire Department, as more specifically described in the “Scope of Work” attached hereto as Exhibit A, and incorporated herein by reference. In order to complete the SEP, Respondent will:

- a. Purchase and donate to the South Portland Fire Department the emergency response equipment within the “Equipment” section of the Scope of Work, by issuing purchase orders for the equipment within sixty (60) days of the effective date of this CAFO and by completing the purchase and donation of the equipment within six (6) months of the effective date of this CAFO, as provided in the Scope of Work; and
- b. Conduct an emergency response exercise at the Facility, as provided for within the “Exercise” section of the Scope of Work, within eighteen (18) months of the

effective date of this CAFO, although every effort will be made to complete this task within twelve (12) months of the effective date. Monson will make efforts to coordinate this drill with regional response resources, as provided for in the Scope of Work, but its drill will not be dependent on any other entity's participation.

10. Respondent shall use best efforts to ensure that all manufacturer and dealer warranties for donated equipment run to the benefit of the recipient of the equipment.

11. The total expenditure for the SEP shall not be less than thirty-two thousand nine hundred and seventy-five dollars (\$32,975), 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 described below.

12. With regard to the SEP, Respondent hereby certifies the truth and accuracy of each of the following:

a. that, as of the date of executing this CAFO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation, and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum. Respondent specifically certifies as follows:

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. To the best of Respondent's 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

this certification, 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.

b. that the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO;

c. that Respondent has not received and will not receive credit for the SEP in any other enforcement action; and

d. that Respondent will not receive any reimbursement for any portion of the SEP from any person other than an affiliate of Monson.

13. Respondent shall submit a SEP Completion Report to EPA within sixty (60) days of completion of the SEP, but in no event later than twenty (20) months after the effective date of this CAFO. The SEP Completion Report shall contain the following information:

a. A detailed description of the SEP as implemented;

b. A description of any implementation problems encountered and the solutions thereto;

c. Itemized costs, documented by copies of purchase orders and receipts, canceled checks, or wire transfer records, for implementing the SEP;

d. An After Accident Report/Improvement Plan, as required by the Scope of Work;

e. Certification by Respondent that the SEP has been fully implemented pursuant to the provisions of this CAFO and confirmation by the South Portland Fire Department that all required equipment has been received in good and functional

condition, and that the training exercise was completed in accordance with the Scope of Work; and

f. A description of the environmental and public health benefits resulting from the implementation of the SEP (with quantification of the benefits and pollutant reductions, if feasible).

14. Respondent agrees that failure to submit the SEP Completion Report shall be deemed a violation of this CAFO and the Respondent shall become liable for stipulated penalties pursuant to paragraph 20 below.

15. Respondent shall submit all notices and reports required by this CAFO, by first class mail or any other commercial delivery service, to:

Laura J. Berry  
Enforcement Counsel (Mail Code OES 04-2)  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

16. 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" shall include 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. In all documents or reports submitted to EPA pursuant to this CAFO, including, without limitation, any SEP reports, Respondent shall, by its officers, 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 to the best of my knowledge. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

18. After receipt of the SEP Completion Report described in paragraph 13 above, EPA will notify Respondent, in writing: (i) identifying any deficiencies in the SEP Completion Report itself and granting Respondent an additional thirty (30) days to correct any deficiencies; or (ii) indicating that the project has been completed satisfactorily; or (iii) determining that the project has not been completed satisfactorily and seeking stipulated penalties in accordance with paragraph 20 herein.

19. If EPA elects to exercise option (i) in paragraph 18 above, *i.e.*, if the SEP Completion Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of the SEP completion itself, Respondent may object in writing to the notice of deficiency given pursuant to this paragraph within ten (10) days of receipt of such notice. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of Respondent's objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CAFO. In the event that the SEP is not completed as contemplated herein, as

determined by EPA, stipulated penalties shall be due and payable by Respondent in accordance with paragraph 20 herein.

20. In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to the performance of the SEP described in the Scope of Work and in paragraph 9 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 11 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

a. For a SEP which has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of forty thousand dollars (\$40,000), plus interest from the effective date of the CAFO;

b. If the SEP is not completed satisfactorily, but (a) EPA determines that Respondent made good faith and timely efforts to complete the project; and (b) Respondent certifies, with supporting documentation, that 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;

c. If the SEP is completed satisfactorily pursuant to this CAFO, but Respondent spent less than 90 percent of the amount of money which was required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount equal to the difference between the amount of money which was required to be spent on the project (\$32,975, as described in paragraph 11), and the actual amount spent on the project, plus interest from the effective date of this CAFO;

d. For failure to submit the SEP Completion Report required by paragraph 13 above, Respondent shall pay a stipulated penalty in the amount of \$200 for each day the SEP Completion Report is late.

21. The determination of whether the SEP has been satisfactorily completed shall be in the sole discretion of EPA.

22. Stipulated penalties as set forth in paragraph 20 above shall begin to accrue on the day after performance is due and shall continue to accrue through the final day of the completion of the activity.

23. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be as follows: Respondent shall submit a certified or cashier's check **payable to the order of the "Treasurer, United States of America," referencing the case name and docket numbers of this action on the face of the check,** to:

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

Respondent shall provide copies of each check to:

Wanda Santiago  
Regional Hearing Clerk (Mail Code ORA18-1)  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

and

Laura J. Berry  
Enforcement Counsel (Mail Code OES 04-2)  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

Interest and late charges shall be paid as stated in paragraphs 33 and 34 below.

24. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim.

25. 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. Respondent hereby waives any confidentiality right it has under 26 U.S.C. § 6103 with respect to such SEP costs on its tax return and on the information supporting its tax return. This waiver of confidentiality is solely as to EPA and the Department of Justice and solely for the purpose of ensuring the accuracy of Respondent's SEP cost certification.

26. 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 violations of the Emergency Planning and Community Right-to-Know Act, the Clean Air Act, and the Resource Conservation and Recovery Act."

#### Civil Penalty

27. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and taking into account the relevant statutory penalty criteria, the facts alleged in the Complaint, the SEP described above, and such other circumstances as justice may require, EPA has determined that it

is fair and proper to assess a civil penalty of sixty-eight thousand one hundred dollars (\$68,100) for the violations alleged in this matter. The penalty shall be apportioned in the following manner: \$12,462 for the alleged EPCRA violations, \$24,584 for the alleged CAA violations, and \$31,054 for the alleged RCRA violations.

28. Respondent shall pay the total penalty amount of \$68,100 in installments according to the payment schedule identified in paragraph 29. Interest at a rate of four percent (4%) per annum shall be included in any and all payments made beyond 30 days from the effective date and shall accrue from 30 days after the effective date until the date of payment.

29. Respondent shall pay the total penalty amount of \$68,100 plus interest according to the following schedule: a) payment of \$24,100 shall be made within thirty (30) calendar days of the effective date of this CAFO; b) payment of \$22,293 (\$22,000 principal plus \$293 accrued interest) shall be made within ninety (90) days of the effective date; and c) payment of \$22,220 (\$22,000 principal plus \$220 accrued interest) shall be made within one hundred eighty (180) days of the effective date.

30. Respondent shall make each payment due under this CAFO by submitting a cashier's or certified check, made payable to the order of the "Treasurer, United States of America," referencing the case name and the EPCRA, CAA, and RCRA docket numbers of this action on the face of the check, in the appropriate amount to:

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

Respondent shall provide copies of each check to:

Wanda Santiago  
Regional Hearing Clerk (Mail Code ORA18-1)  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

and

Laura J. Berry  
Enforcement Counsel (Mail Code OES 04-2)  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

31. If Respondent fails to make any payment required by paragraph 29 by the required due date, the total penalty amount of \$68,100, plus all accrued interest (less payments already made), shall become due immediately to the United States upon such failure. Then, interest as calculated under paragraphs 33 and 34 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. All payments to the United States under this paragraph shall be made by cashier's or certified check as described in paragraph 30.

32. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim.

33. In the event that any portion of the civil penalty amount relating to the alleged EPCRA or RCRA violations (which shall be deemed to be 64 percent of any payment due under paragraph 29, above), or any stipulated penalty relating to the performance of SEPs pursuant to

paragraph 20, above, is not paid when due, the penalty shall be payable, plus accrued interest<sup>1</sup>, without demand. Interest shall be payable at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b)(2) and shall accrue from the original date on which the penalty was due to the date of payment. In addition, a penalty charge of six percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. However, should assessment of the penalty charge on the debt be required, it will be assessed as of the first day payment is due under 31 C.F.R. § 901.9(d). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

34. In the event that any portion of the civil penalty amount relating to the alleged CAA violations (which shall be deemed to be 36 percent of any payment due under paragraph 29, above) is not paid when due without demand, pursuant to Section 113(d)(5) of the CAA, Respondent will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Interest will be assessed on the civil penalty if it is not paid when due. In that event, interest will accrue from the due date at the “underpayment rate” established pursuant to 26 U.S.C § 6621(a)(2). In the event that a penalty is not paid when due, an additional charge will be assessed to cover the United States’ enforcement expenses, including attorney’s fees and collection costs. In addition, a quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the penalty persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent’s outstanding civil penalties and nonpayment penalties hereunder accrued as of the beginning of such quarter. In any such

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<sup>1</sup> If Respondent misses a penalty installment payment, the entire penalty becomes accelerated and due, in accordance with paragraph 31. Thus, the interest rate referred to in this paragraph and the next (*i.e.*, paragraphs 33 and 34) is not the interest rate used to calculate the installment payments but rather the interest rate that will apply if Respondent fails to pay the entire accelerated penalty and/or incurs SEP-related stipulated penalties.

collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

35. The civil penalty provided under this CAFO, and any interest, nonpayment penalties, and charges described in this CAFO, shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and are not tax deductible for purposes of federal, state or local law. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

36. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 325(c) of EPCRA, Section 113(d) of the CAA, and Section 3008(a) of RCRA for the violations alleged in the Complaint. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA for matters not addressed in the Complaint or this CAFO, and it is the responsibility of Respondent to comply with all applicable provisions of federal, state, or local law.

37. This CAFO in no way relieves Respondent or its employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

38. 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 CAFO or of the statutes and regulations upon which the

Complaint and this CAFO is based, or for Respondent's violation of any applicable provision of law.

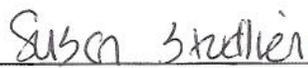
39. This CAFO shall not relieve Respondent of its obligations to comply with all applicable provisions of federal, state, or local law; nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

40. The parties shall bear their own costs and fees in this action, including attorney's fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

41. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which it is filed with the Regional Hearing Clerk.

42. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

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

Date: 01/24/12

FOR RESPONDENT CONSOLIDATED INDUSTRIES, INC.

  
\_\_\_\_\_  
Stephen Barney, President  
on behalf of  
Monson Companies, Inc.

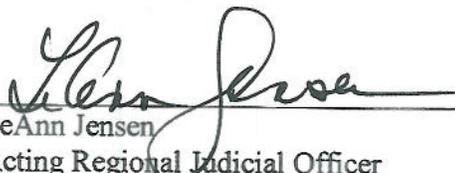
Date: 1/13/2012

**FINAL ORDER**

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

Date:

1/26/12

  
\_\_\_\_\_  
LeAnn Jensen  
Acting Regional Judicial Officer  
U.S. Environmental Protection Agency, Region I

## APPENDIX A – SUPPLEMENTAL ENVIRONMENTAL PROJECT

### MONSON COMPANIES, INC.

EPCRA-01-2011-0120, CAA-01-2011-0121, RCRA-01-2011-0122

Monson Companies, Inc. (“Monson”) operates a facility at One Runway Road, South Portland, Maine (the “Facility”) which includes a warehouse, distribution facility, repackaging, and custom blending chemical manufacturing operation. Monson received an Administrative Complaint arising under EPCRA, CAA, and RCRA, alleging, among other things, that it violated certain reporting requirements under EPCRA and chemical accident prevention requirements under the CAA. Monson shall perform this supplemental environmental project (“SEP”) as a component of its settlement with EPA.

### BACKGROUND

South Portland is a coastal community in Cumberland County, Maine with approximately 23,800 residents. The western portion of the city includes commercial, industrial and advanced technology property, and the eastern portion includes a community college, a beach area, parks, a marina, and an oil port. The city is served by the South Portland Fire Department (“SPFD”), which is comprised of approximately 135 total (75 full-time) employees.

Representatives of the Maine Emergency Management Agency, the Cumberland County LEPC, and the SPFD have expressed interest in partnering with Monson in providing a training opportunity to local emergency responders that will allow emergency responders to become more familiar with Monson’s Facility and also provide those responders with quality training that can be utilized at any of the facilities in Cumberland County with Extremely Hazardous Substances (“EHS”). This SEP is designed to provide such training as well as needed equipment to local emergency responders.

The SEP provides for the purchase of equipment for use by Cumberland County emergency response teams and the development and staging of a multi-department Level A entry exercise for several teams. The purchase of a heated Reeves cold weather shelter will allow emergency response teams to operate in a cold weather environment. The exercise will provide emergency responders with the opportunity to practice response techniques and gauge their preparedness.

### SCOPE OF WORK

The SEP will provide certain emergency response personnel with appropriate equipment, education, and training for a large scale emergency response to a chemical spill. The proposal is in two phases: emergency response equipment acquisition and a multi-department Level A entry exercise. All time frames referred to within the Scope of Work relate to the effective date of the Consent Agreement and Final Order.

**Phase I: Equipment**

**(To be completed within six months of the effective date of the CAFO)**

Monson shall purchase and provide to the SFPD the following specialized emergency response equipment:

Reeves Small Emergency Operations Center (Model RHPK0150) (1 unit)	Will cost no less than <u>22,975.00</u>
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The Reeves Small Emergency Operations Center provides response personnel with a rapidly-deployable, rugged, man-portable, climate-controlled, soft-walled shelter in which Emergency Operations can be directed and coordinated from a centralized location in the field.

**Phase II: Exercise**

**(Monson will use best efforts to complete exercise within twelve months of the effective date of the CAFO; exercise to be completed and AAR/IP submitted no more than twenty months after effective date of CAFO)**

Under the guidance of the SERC, Monson and the SFPD shall develop an exercise design team to coordinate and design a large-scale Level A entry emergency response training exercise to take place at Monson's South Portland Facility. The design team shall include a member who is certified under the Homeland Security Exercise and Evaluation Program ("HSEEP").

The staged event shall focus on two events resulting in spills of hazardous materials: (1) a railcar incident; and (2) an unknown product leaking from a large container. Monson shall host the training exercise at its Facility over two days. Each team that participates in the exercise shall take part in a site familiarization of the Facility and Level A entry event exercises.

Following completion of the exercise event, the exercise design team shall conduct an after action review and submit to Monson and to EPA a formal AAR/IP (After Action Report/Improvement Plan).

Monson and the SFPD are interested in broadening this exercise to involve emergency response teams from throughout Cumberland County, including response teams from neighboring towns and the Maine Department of Environmental Protection. Monson shall make efforts to engage other regional emergency response personnel and invite them to participate in the exercise, but Monson's performance of the exercise will not depend on the involvement of others.

The cost estimate for the exercise is:

1. Pre-event planning, design team expenses, and equipment to develop the field exercise	\$5,000.00
2. Exercise costs including supplies and equipment, excluding meals and lodging	\$5,000.00
Subtotal for Exercise	<u>\$10,000.00</u>

**SEP TOTAL COST: \$32,975.00**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

_____ )	
In the matter of )	
MONSON COMPANIES, INC. )	Docket Nos: EPCRA-01-2011-0120,
One Runway Road )	CAA-01-2011-0121,
South Portland, ME 04106 )	RCRA-01-2011-0122
Respondent )	
_____ )	

**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 Rivera  
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:

Michael W. Parker, Esq. (Counsel for Respondent)  
Rackemann Sawyer & Brewster  
160 Federal Street  
Boston, MA 02110-1700

Dated: 1/26/12

  
\_\_\_\_\_  
Laura J. Berry  
Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100 (OES04-2)  
Boston, MA 02109-3912  
Tel (617) 918-1148  
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