

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Timothy Comady 5/18/15  
Name of Case Attorney Date

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

Case Docket Number CWA-01-2015-0009

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:

Hawe Motors, Inc.  
Rath, Young and Pignatelli LP  
One Capital Plaza  
Concord, NH 03302-1500

Total Dollar Amount of Receivable \$ 17,500 Due Date: 6/18/15

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  
NEW ENGLAND REGION

May 18, 2015

Wanda Santiago  
Paralegal/Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region I  
5 Post Office Square  
Boston, Massachusetts 02109

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EPA ORC *WS*  
Office of Regional Hearing Clerk

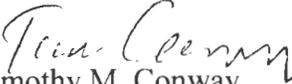
**Re:** Howe Motors, Inc., Respondent  
**Docket No. CWA-01-2015-0009**

Dear Ms. Santiago:

Enclosed for filing in the above-referenced matter, please find the original and one copy of the executed Consent Agreement and Final Order in this matter.

Thank you for your assistance in this matter.

Very truly yours,

  
Timothy M. Conway  
Senior Enforcement Counsel

Enclosures

cc:

Marcia A. Brown, Esquire

In the Matter of Howe Motors, Inc.  
Docket No. CAA-01-2015-0009

**CERTIFICATE OF SERVICE**

I hereby certify that, on May 18, 2015, the foregoing Consent Agreement and Final Order was delivered in the manner stated to the following addressees:

**Original and One Copy by  
Hand Delivery to:**

Wanda Santiago  
Paralegal/ Regional Hearing Clerk  
US EPA Region 1  
5 Post Office Square, Suite 100 (ORA 18-1)  
Boston, MA 02109-3912

**Copy by Mail  
to Respondent:**

Marcia A. Brown, Esq.  
Rath, Young and Pignatelli LLP  
One Capital Plaza  
Concord, NH 03302-1500

Signed:

  
\_\_\_\_\_  
Timothy M. Conway  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency  
Five Post Office Square, Suite 100 (OES 4-03)  
Boston, MA 02109-3912  
Phone: 617-918-1705  
Fax: 617-918-0705 or 617-918-1809

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

	)	
IN THE MATTER OF:	)	Docket No. CWA 01-2015-0009
	)	
	)	
HOWE MOTORS INC.	)	<b>CONSENT AGREEMENT AND FINAL</b>
114 Charlestown Road	)	<b>ORDER FOR CLASS II CIVIL</b>
Claremont, NH 03743	)	<b>PENALTY UNDER SECTION</b>
	)	<b>311(b)(6)(B)(ii) OF THE CLEAN</b>
	)	<b>WATER ACT</b>
	)	
Respondent	)	
	)	

The Regional Administrator of the United States Environmental Protection Agency, Region I (“EPA”), issues this Consent Agreement and Final Order (“CAFO”) to Howe Motors Inc. (“Respondent”). EPA alleges that Respondent violated Section 311(j) of the Clean Water Act (the “Act”), 33 U.S.C. § 1321(j). The parties agree to resolve this action by the 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 Rules”).

**I. DESCRIPTION OF VIOLATIONS**

1. EPA alleges that Respondent failed to comply with the Oil Pollution Prevention regulations set forth at 40 C.F.R. Part 112 under the authority of Section 311(j) and other provisions of the Clean Water Act, 33 U.S.C. § 1321(j).

**RECEIVED**

**MAY 18 2015**

EPA ORC  
Office of Regional Hearing Clerk

2. EPA alleges that Respondent failed to comply with the Discharge of Oil regulations set forth at 40 C.F.R. Part 110 under the authority of Section 311(b)(3) of the Act.

**A. Statutory and Regulatory Authority**

3. EPA takes this action under the authority of Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), for violation of Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), and Section 311(j) of the Act, 33 U.S.C. § 1321(j).

**B. General Allegations**

4. Section 311(j)(1) of the Act, 33 U.S.C. § 1321(j)(1), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore and offshore facilities, and to contain such discharges . . . .”

5. Under the authority of Section 311(j)(1) of the Act, 33 U.S.C. § 1321(j)(1), the Oil Pollution Prevention regulations establish procedures, methods, and requirements for preventing the discharge of oil. These requirements apply to owners or operators of non-transportation-related facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products that, due to their location, could reasonably be expected to discharge oil in harmful quantities (as defined in 40 C.F.R. Part 110) to navigable waters of the U.S. or adjoining shorelines.

6. Under 40 C.F.R. § 112.3, an owner or operator of an onshore facility subject to the Oil Pollution Prevention regulations must prepare a Spill Prevention Control and

Countermeasure (“SPCC”) Plan in writing in accordance with 40 C.F.R. § 112.7, and fully implement such plan.

7. Respondent is a “person” within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7), 1362(5).

8. Respondent is the “owner or operator” within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), a facility that stores petroleum products located at 114 Charlestown Road in Claremont, New Hampshire.

9. Respondent is engaged in storing, using, and consuming “oil”, within the meaning of 40 C.F.R. § 112.2, or oil products located at the Facility. The Facility has an aggregate above-ground oil storage capacity greater than 8,500 gallons.

10. The Facility is an “onshore facility” within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

11. The Facility is a “non-transportation-related” facility within the meaning of 40 C.F.R. § 112.2 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

12. “Navigable waters” of the United States are defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1.

13. Based on the above, the Facility is therefore a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable waters of the United States or its adjoining shorelines in a harmful quantity.

14. Respondent is therefore subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112 at the Facility.

15. Section 311(b)(3) of the Act, 33 U.S.C. § 1321 provides that, “The discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone . . . , in such quantities as may be harmful as determined by the President . . . is prohibited, except (A) in the case of such discharges into the waters of the contiguous zone or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States . . . and (B) where permitted in quantities and at times and locations or under such circumstances or conditions as the President may, by regulation, determine not to be harmful.”

16. Under the authority of Section 311(b)(3), the Discharge of Oil regulations establish what constitutes a harmful discharge.

17. Under 40 C.F.R. 110, any discharge of oil that, “(a) violate[s] applicable water quality standards; or (b) cause[s] a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines,” is a violation.

### **C. Allegations of Findings of Violation**

18. On March 28, 2014, an authorized EPA representative inspected Respondent’s Facility for compliance with Section 311(j) of the Act, 33 U.S.C. § 1321(j), and in particular, the requirements of the Oil Pollution Prevention regulations, 40 C.F.R. Part 112.

19. By letter dated December 8, 2014, EPA notified Respondent that its Facility was not in compliance with 33 U.S.C. § 1321(j) because of deficiencies in the Facility’s SPCC Plan.

20. Based on the inspection, EPA has determined that Respondent failed to prepare and fully implement an SPCC Plan at its Facility in accordance with the provisions of 40 C.F.R. § 112.7 in violation of 40 C.F.R. § 112.3.

21. Respondent's failure to prepare and fully implement an SPCC plan for the Facility violated 40 C.F.R. § 112.3. Respondent is in violation of these requirements each day beginning with the period it was required to implement a plan under 40 C.F.R. Part 112, and ending when it fully implements an SPCC Plan for the Facility consistent with all the requirements of 40 C.F.R. Part 112.

22. As alleged in the preceding paragraph, and pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violations continue.

23. On January 13, 2014 an authorized EPA representative inspected Respondent's Facility for compliance with Section 311(b)(3) of the Act, 33 U.S.C. § 1321, and in particular, the requirements of, 40 C.F.R. Part 110.

24. Based on inspection, EPA determined that the Facility discharged oil into a navigable water body in harmful quantities in violation of Section 311(b)(3) of the Act, 33 U.S.C. § 1321 and 40 C.F.R. § 110.3

25. As alleged in the preceding paragraph, and pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violations continue.

## **II. CONSENT AGREEMENT**

EPA and Respondent agree that the above matter constitutes a disputed claim and that settlement of the above matter is in the public interest, and that entry of this CAFO without litigation is the most appropriate means of resolving this matter. Therefore, before taking any testimony, without adjudication of any issue of fact or law, and upon consent and agreement of the parties to this action hereby stipulate as follows:

26. Respondent admits the jurisdictional allegations in Section I above.

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

#### **A. Waiver of Rights**

28. Respondent waives the right to a hearing under Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), to appeal this Final Order in this matter under Section 311(b)(6)(G)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(G)(ii), and consents to the issuance of this Final Order without further adjudication.

#### **B. Civil Penalty**

29. Complainant proposes, and Respondent consents to, the assessment of a civil penalty of \$17,500. EPA has determined that this is an appropriate settlement penalty based on the specific facts and circumstances of this case, with reference to the relevant penalty factors identified at Section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8).

### **C. Payment Terms**

30. Based on the foregoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

31. Within 30 days of the effective date of the Final Order, Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency" and referencing the title and docket number of the action ("In the Matter of: Howe Motors Inc., Docket No. CWA 01-2015-0009") and "Oil Spill Liability Trust Fund - 311" in the amount specified in Paragraph 29 to:

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

32. Respondent shall note on the penalty payment check the title and docket number of this case. Respondent shall submit copies of the check to the following people:

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

and

Tim Conway  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency, Region I  
5 Post Office Square, Suite 100  
Mail Code OES04-3  
Boston, Massachusetts 02109-3912

#### **D. General Provisions**

33. Pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H), a failure by the Respondent to pay the penalty amount 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 the current prevailing rates from the effective date of the 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, attorneys' 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 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.

34. Respondent certifies that it shall not use any portion of its settlement penalty payment in any way as, or in furtherance of, a tax deduction for Respondent, or for any of Respondent's corporate affiliates or officers, under federal, state or local law.

35. The terms of this CAFO shall apply to and be binding on EPA and on Respondent, its officers, directors, agents, servants, employees, successors and assigns.

36. This CAFO constitutes a settlement by EPA of all claims for federal civil penalties under Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6), for the violations set out in Section I above.

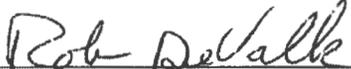
37. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other 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 alleged violations and facts set forth herein.

38. Except as described in Paragraph 33 of the Consent Agreement, each party shall bear its own costs, disbursements and attorneys' 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.

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

FOR HOWE MOTORS INC.:

Date: 3-25-15

  
Robert DeValk, President

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: 03/31/15

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

### III. 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 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 311(b)(6)(D) of the Act, 33 U.S.C. 1321(b)(6)(D), and 40 C.F.R. Part 22.

Date: 5/14/15

  
\_\_\_\_\_  
LeAnn Jensen  
Acting Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 1