

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda L. Santiago for William Chin 9/29/15
Name of Case Attorney Date

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

Case Docket Number CWA-01-2015-0033

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:

Nexamp, Inc.
4 Liberty Square, Floor 3
Boston, MA 02109

Total Dollar Amount of Receivable \$ 16,000 Due Date: 11/7/15

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



U.S. Environmental Protection Agency

Region 1
5 Post Office Square – Suite 100
Boston, MA 02109-3912

September 29, 2015

VIA HAND DELIVERY

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

RECEIVED

SEP 29 2015

EPA ORC WS
Office of Regional Hearing Clerk

Re: In the Matter of: Nexamp, Inc.
Docket No. CWA 01-2015-0033

Dear Ms. Santiago,

Enclosed for filing, please find a Consent Agreement and Final Order (CAFO) that will simultaneously initiate and settle the matter referenced above.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "William D. Chin".

William Chin
Enforcement Counsel

Enclosure

cc: Jeffrey R. Porter, Esq.

In the Matter of: Nexamp, Inc., Docket No. CWA-01-2015-0033

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,
By Hand Delivery:

Ms. Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square, Suite 100 (ORA18-1)
Boston, MA 02109-3912

Copy, by Certified Mail,
Return Receipt Requested

Jeffrey R. Porter, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111

Dated:

9/29/15



William Chin
Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square, Suite 100 (OES04-4)
Boston, MA 02109-3912
(617) 918-1728

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of:)	
)	Docket No.
Nexamp, Inc.)	CWA-01-2015-0033
4 Liberty Square, Floor 3)	
Boston, MA 02109)	CONSENT AGREEMENT AND
)	FINAL ORDER
Action for Class II Civil Penalty Under)	
Section 309(g) of the Clean Water Act)	

CONSENT AGREEMENT

Introduction

1. Complainant, the United States Environmental Protection Agency ("EPA"), Region 1, alleges that Respondent, Nexamp, Inc. ("Nexamp" or "Respondent") has violated Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1311(a), at the construction site of its solar photovoltaic facility in a former sand and gravel mine located on Pitcherville Road in Hubbardston, Massachusetts.

2. Complainant and Respondent agree 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. Accordingly, Respondent consents to the terms and issuance of this CAFO, and consents for the purposes of settlement to the payment of the civil penalty as set forth in this CAFO. Pursuant to 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, Complainant and Respondent agree to simultaneously commence and settle this action by the issuance of this CAFO. However, Respondent neither admits nor denies any of the specific legal or factual allegations contained in this CAFO.

RECEIVED

SEP 29 2015

EPA ORC *WS*
Office of Regional Hearing Clerk

3. Therefore, before any hearing, and without the adjudication of any issue of fact or law, upon the record, and upon consent and agreement of Complainant and Respondent, it is hereby ordered as follows:

Statutory and Regulatory Authority

4. Complainant takes this action under the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for alleged violations of Section 301(a) of the CWA. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), Complainant will notify the Massachusetts Department of Environmental Protection (“MA DEP”) prior to the assessment of a penalty in this action.

5. Section 301(a) of the CWA prohibits the discharge of pollutants by any person into the navigable waters of the United States except in compliance with, among other things, a National Pollutant Discharge Elimination System (“NPDES”) permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

6. Section 502(12) of the CWA, 33 U.S.C. § 1362(12) defines “discharge of pollutants” to include “any addition of any pollutant to navigable waters from any point source.” Section 502(14) of the CWA, 33 U.S.C. § 1362(14) defines a “point source” as “any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.”

7. Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B), requires any storm water discharge associated with “industrial activity” to be authorized by a NPDES permit.

8. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes EPA to require the owner or operator of any point source to provide such information as EPA may reasonably require to

carry out the objectives of the CWA, including the issuance of NPDES permits pursuant to Section 402 of the CWA.

9. Pursuant to Sections 308(a) and 402(p) of the CWA, EPA promulgated regulations relating to the control of storm water at 40 C.F.R. § 122.26.

10. Forty C.F.R. § 122.26(c) requires dischargers of storm water associated with “industrial activity” to apply for an individual permit or to seek coverage under a promulgated general permit.

11. Forty C.F.R. § 122.26(b)(14)(x) defines “industrial activity” to include “construction activity” such as “clearing, grading and excavation” of land that results in, among other things, the disturbance of five or more acres of total land area.

12. In February 1998, EPA issued the NPDES General Permit for Storm Water Discharges from Construction Activities (“CGP”), 63 Fed. Reg. 7858 (Feb. 17, 1998). EPA subsequently re-issued the CGP in 2003, 2008 and 2012. The 2012 CGP became effective on February 16, 2012 [See 77 Fed. Reg. 12286 (February 29, 2012)]. The 2012 CGP authorizes, subject to conditions contained therein, the discharge of pollutants in storm water runoff associated with construction activities within the Commonwealth of Massachusetts (Permit Number: MAR100000).

13. To obtain coverage under the 2012 CGP, Part 1.4. of the 2012 CGP requires “operators” to submit a Notice of Intent (“NOI”). Appendix A of the 2012 CGP defines “operator” as “any party associated with a construction project” that has either “operational control over construction plans and specifications, including the ability to make modifications to

those plans and modifications” or “day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions.”

14. Part 1.4.2. and Table 1 of the 2012 CGP require the operator of a new construction project to submit a NOI and be authorized to discharge storm water from construction activities prior to the commencement of construction activities.

15. Part 2 of the 2012 CPG requires operators to “design, install, and maintain erosion and sediment controls that minimize the discharge of pollutants” from construction activities into the nation’s waters. The term “minimize,” as used in Part 2, is further defined in Appendix A as meaning “to reduce and/or eliminate to the extent achievable using control measures that are technologically available and economically practicable and achievable in light of the best industry practice.”

16. Part 2.1 of the 2012 CGP sets forth the general requirements for erosion and sediment control measures in the SWPPP including design requirements (Part 2.1.1.2), installation requirements (Part 2.1.1.3) and maintenance requirements (Part 2.1.1.4).

17. Part 2.1.2.2.a of the 2012 CGP requires that the operator install sediment controls along those perimeter areas of the site that will receive stormwater from earth-disturbing activities.

18. Part 2.1.3.2.a.iii of the 2012 CGP requires that, if an operator installs a sediment basin at his site, the operator must prevent erosion of (1) the sediment basin using stabilization controls, and (2) the inlet and outlet using erosion controls and velocity dissipation devices.

19. Section 309(g) of the CWA authorizes EPA to assess a civil penalty of up to \$10,000 per day of violation of Section 301(a) of the CWA, up to a maximum penalty of \$125,000.

Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations of Section 301(a) of the CWA that occurred after December 8, 2013 are subject to a penalty of up to \$16,000 per day per violation with a maximum total penalty of \$187,500.

Factual Allegations

20. The Nexamp, Inc. site (the "Site") is located on Pitcherville Road in Hubbardston, Massachusetts. It is a former sand and gravel mine in which Nexamp has developed an approximately 20-acre solar photovoltaic facility.

21. Respondent is a corporation established under the laws of the State of Delaware, with a principal office at 4 Liberty Square, Floor 3 in Boston, Massachusetts.

22. Respondent is a "person," as defined at Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

23. Respondent is (and was during construction) an "operator" of the Site, as defined at Appendix A of the 2012 CGP.

24. Stormwater discharges from the Site partly through a detention basin and partly via run off from the Site. Unless otherwise controlled, stormwater discharges would reach several wetlands areas adjacent to the Site. The wetlands discharge to Hubbardston Brook, which in turn flows into the Otter River, which in turn flows into Millers River, which eventually discharges into the Connecticut River.

25. On July 29, 2013, Respondent submitted a NOI for storm water permit coverage under the 2012 CGP for the construction of the solar photovoltaic facility on the Site. Respondent also retained Environmental Resources Management of Boston, Massachusetts ("ERM") to develop a Stormwater Pollution Prevention Plan ("SWPPP") with respect to the

construction on the Site. The SWPPP was signed on July 26, 2013 and includes, in Section 3, Erosion and Sediment Controls designed by ERM.

26. On October 18, 2012, the Hubbardston Conservation Commission issued a Negative Determination of Applicability (“NDA”) under the Massachusetts Wetlands Protection Act, Massachusetts General Laws Chapter 131, §40, and the regulations promulgated thereunder, concluding that the work, including the implementation of the erosion and sediment control plan, would not impact the wetlands areas adjacent to the Site.

27. In August 2013, Respondent commenced construction activity at the Site in compliance with the NOI, the SWPPP and the NDA including the complete implementation of the Erosion and Sediment Controls specified in the SWPPP.

28. Between Saturday, March 29 and Monday, March 31, 2014, a severe storm event resulted in approximately 2.8 inches of rain at the Site. The combination of stormwater and snow melt, together with the fact that the ground was frozen, caused the partial failure of the Erosion and Sediment Controls specified in the SWPPP and the resulting discharge of sand in approximately 6,000 to 7,000 square feet of an adjacent wetland.

29. Immediately upon the discovery of the partial failure of the Erosion and Sediment Controls on the morning of Monday, March 31, 2014, Nexamp undertook remedial actions including: (a) the placement of entrenched siltation fence where Erosion and Sediment Controls had been damaged; (b) the placement of 150 staked hay bales at the siltation fence locations; (c) the removal of accumulated sediment in a swale formed by storm water runoff and the reshaping of that swale; (d) placement of multiple stone berms to control future runoff; (e) repair of the

access road adjacent to the impacted wetland; and (f) the placement of staked hay bales in and adjacent to the impacted wetland.

30. Nexamp notified the Hubbardston Conservation Commission of the failure of the Erosion and Sediment Controls on April 1, 2014, the United States Army Corps of Engineers on April 2, 2014, the Massachusetts Natural Heritage and Endangered Species Program on April 3, 2014, and EPA on April 4, 2014.

31. On April 4, 2014, Complainant conducted a CWA compliance inspection of the Site (“Inspection”) to evaluate Respondent’s compliance with the 2012 CGP.

32. Between April and early November 2014 Nexamp and ERM, in coordination with the Hubbardston Conservation Commission and the United States Army Corps of Engineers designed and implemented a plan to remove sand deposited in the impacted wetland during the March 29 to March 31, 2014 storm event and restore the impacted areas. Nexamp has spent approximately \$120,000 to address the impacts of the March 29 to March 31, 2014 storm event.

33. On November 17, 2014, the United States Army Corps of Engineers notified Nexamp that no further action was necessary.

34. On December 4, 2014, the Hubbardston Conservation Commission notified Nexamp that no further action was necessary.

35. Based on the Inspection and other information provided by Respondent and/or other sources after the Inspection, Complainant identified the following alleged violations:

Failure to comply with 2012 CGP

36. At the time of the Inspection, Complainant's inspector reviewed stormwater inspection reports for the Construction Site from March 7, 2014, March 13, 2014, March 20, 2014, March 27, 2014, and March 31, 2014. The inspection report from March 13, 2014 indicated that an area of silt fence had been damaged during snow plowing activities on March 12, 2014, and the March 31, 2014 inspection report indicated the storm-related damage to erosion and sediment control measures discussed further in paragraph 37 below. The March 31, 2014 inspection report noted the discharge of sediment in stormwater as a result of the storm-related damage to the Erosion and Sediment Controls.

37. At the time of the April 4th Inspection, Complainant's inspector observed several locations at the Site where: (a) existing stormwater control measures had failed and/or required maintenance/repair; and (b) sand and sediment contained in stormwater discharges from the Site had been deposited into wooded areas, buffer zones and adjacent wetlands (particularly in the southern end of the site).

38. The sedimentation basin and the swales from the Site are "point sources," as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

39. The storm water discharges from the Site during the March 29th to March 31st storm event contained "pollutant[s]" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

40. The storm water discharges from the Site during the March 29th to March 31st storm event were "discharges of pollutants," as defined at Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

41. The storm water discharges from the Site during the March 29th to March 31st storm event were "storm water discharges from an industrial activity," as defined at 40 C.F.R. § 122.26(b)(14)(x).

42. Hubbardston Brook, Otter River, Millers River, and the Connecticut River are all "waters of the United States," as defined at 40 C.F.R. § 122.2 and, thereby, are "navigable waters," as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

43. On March 29 to March 31, 2014, during a severe storm event, Respondent discharged stormwater associated with industrial activity within the meaning of 40 C.F.R. § 122.26, from point sources to waters of the United States.

44. By failing to design, install and maintain adequate erosion and sediment controls that minimized the discharge of pollutants from earth-disturbing activities at the Site from March 29 to March 31, 2014, Respondent violated Part 2.1 of the 2012 CGP.

45. By failing to install adequate sediment controls along those perimeter areas of the Site that received stormwater from earth-disturbing activities from March 29 to March 31, 2014, Respondent violated Part 2.1.2.2.a of the 2012 CGP.

46. By failing to prevent erosion of the sediment basin at the Site using stabilization controls, and the inlet and outlet of the basin using erosion controls and velocity dissipation devices from March 29 to March 31, 2014, Respondent violated Part 2.1.3.2.a.iii of the 2012 CGP.

47. By discharging stormwater associated with industrial activity into waters of the United States in violation of the terms and conditions of a permit issued pursuant to Section 402

of the CWA, and by failing to comply with all of the conditions in the 2012 CGP from March 29 to March 31, 2014, Respondent violated Section 301(a) of the CWA.

Terms of Settlement

48. The provisions of this CAFO shall apply to and be binding on Respondent, its officers, directors, successors and assigns.

49. Respondent agrees that EPA has jurisdiction over the subject matter alleged in this CAFO. For purposes of this CAFO, including any further action to enforce the terms of this CAFO, Respondent waives any defenses it might have as to jurisdiction and venue.

50. Respondent acknowledges that it has been informed of its right to request a hearing in this proceeding, and hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in this CAFO.

51. Respondent hereby waives its right to appeal the Final Order accompanying this Consent Agreement.

52. Without admitting or denying the specific allegations contained in this CAFO, Respondent consents to the terms and issuance of this CAFO, and consents for the purposes of settlement to the payment of the civil penalty as set forth in this CAFO.

53. Complainant and Respondent agree that Respondent shall pay a civil penalty in the amount of \$16,000 in settlement of this matter.

54. In agreeing to the civil penalty set forth in this CAFO, Complainant has taken into account the particular facts and circumstances of this matter, with specific reference to the penalty factors set forth in Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3),

55. Respondent shall pay the civil penalty set forth in this CAFO no later than 10 calendar days after this CAFO becomes final.

56. This CAFO shall become final thirty (30) calendar days after it is signed by the Regional Judicial Officer.

57. Respondent shall make the penalty payment by submitting a bank or certified check, payable to the order of the "Treasurer, United States of America," to:

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

Respondent shall note the name ("In the Matter of: Nexamp, Inc.") and docket number ("CWA-01-2015-0033") of this matter on the payment check, and shall provide copies of the check with a cover letter to:

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square - Suite 100
Mail Code: ORA18-1
Boston, MA 02109-3912

and

William D. Chin
Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square - Suite 100
Mail Code: OES04-4
Boston, MA 02109-3912

58. Pursuant to Sections 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.

59. The civil 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.

Public Notice

60. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), Complainant shall provide public notice of, and a reasonable opportunity to comment on, this proposed assessment of administrative penalties against Respondent. If a hearing is held on this matter, members of the public who have submitted timely comments on this proposed penalty shall have the right under Section 309(g)(4)(B) of the CWA, 33 U.S.C. § 1319(g)(4)(B), to be heard and to present evidence at the hearing.

Additional Provisions

61. Pursuant to 40 C.F.R. § 22.5(c)(4), the following individual is authorized to receive service on behalf of EPA:

William D. Chin
Enforcement Counsel
U.S. EPA, Region 1
One Congress Street
Suite 1100 (SEL)
Boston, MA 02114-2023

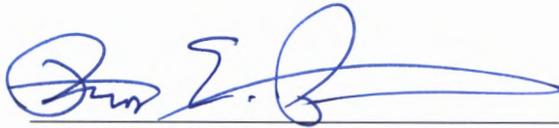
62. This CAFO does not constitute a waiver, suspension, or modification of the requirements of Sections 301 and 308 of the CWA, 33 U.S.C. §§ 1311 and 1318, or any regulations promulgated thereunder, and does not affect the right of the EPA Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged herein.

63. Except as described in Paragraph 58, each party shall bear its own costs and fees in this proceeding, and specifically waive any right to cover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

64. Each undersigned representative of the parties to this CAFO certifies that she or he 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.

THE UNDERSIGNED enter into this CAFO on behalf of her/his respective party for In the Matter of: Nexamp, Inc., Docket No. CWA-01-2015-0033:

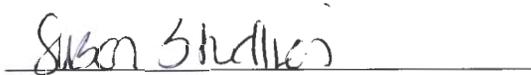
For Nexamp, Inc.:



Robert E. Pantano
Chief Financial Officer and
Chief Operating Officer
Nexamp, Inc.

8/12/2015
Date

For U.S. EPA, Region 1:



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

08/17/2015
Date

III. FINAL ORDER

65. EPA has provided a thirty-day opportunity for public notice and comment on this proposed CAFO, pursuant to Sections 309(g)(4)(A) of the CWA, 33 U.S.C. §§ 1319(g)(4)(A), and 40 C.F.R. § 22.45(b).

66. The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order.

67. 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 309(g)(4)(C) of the CWA, 33 U.S.C. §§ 1319(g)(4)(C) and 40 C.F.R. Part 22.



LeAnn Jensen
Acting Regional Judicial Officer
U.S. EPA, Region 1

9/28/15

Date



U.S. Environmental Protection Agency

Region 1

5 Post Office Square – Suite 100
Boston, MA 02109-3912

September 29, 2015

VIA HAND DELIVERY

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

Re: In the Matter of: Nexamp, Inc.
Docket No. CWA 01-2015-0033

Dear Ms. Santiago,

Enclosed for filing, please find a Consent Agreement and Final Order (CAFO) that will simultaneously initiate and settle the matter referenced above.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "William D. Chin".

William Chin
Enforcement Counsel

Enclosure

cc: Jeffrey R. Porter, Esq.

In the Matter of: Nexamp, Inc., Docket No. CWA-01-2015-0033

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,
By Hand Delivery:

Ms. Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square, Suite 100 (ORA18-1)
Boston, MA 02109-3912

Copy, by Certified Mail,
Return Receipt Requested

Jeffrey R. Porter, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
One Financial Center
Boston, MA 02111

Dated: 9/29/15



William Chin
Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square, Suite 100 (OES04-4)
Boston, MA 02109-3912
(617) 918-1728