

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda L. Santiago for Margery Adams 11/2/15
Name of Case Attorney Date

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

Case Docket Number CWA-01-2015-0047

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:

Borrego Solar System, Inc.
Michael Hall, Chief Executive Officer

Total Dollar Amount of Receivable \$ 90,000 Due Date: 12/12/15

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: _____ Phone Number
in the Financial Management Office



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

November 2, 2015

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 the matter of Borrego Solar Systems, Inc., Docket No. CWA-01-2015-0047*

Dear Ms. Santiago:

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

1. Letter to LeAnn Jensen, Regional Judicial Officer;
2. Consent Agreement and Final Order; and
3. Certificate of Service.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Margery L. Adams".

Margery L. Adams
Senior Enforcement Counsel

Enclosures

cc: Harlan Doliner, Esq.
Andrew Spejewski, EPA



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

RECEIVED

NOV - 2 2015

EPA ORC WJ
Office of Regional Hearing Clerk

November 1, 2015

BY HAND

LeAnn Jensen
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 1 (ORA 18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Re: *In the matter of Borrego Solar Systems, Inc., Docket No. CWA-01-2015-0047*

Dear Ms. Jensen:

Enclosed please find a Consent Agreement and Final Order ("CAFO") for your signature. This settlement calls for the respondent in the above entitled action to pay a penalty of \$90,000 under Section 309(g) of the Clean Water Act for violations of the Construction General Permit for Stormwater Discharges at the Midstate Solar facilities in Warren, Massachusetts.

The proposed penalty of \$90,000 in this matter is consistent with the "Supplemental Guidance Interim Clean Water Act Settlement Penalty Policy (March 1, 1995) for Violations of the Construction Stormwater Requirements" (February 5, 2008) and the statutory penalty factors found in Section 309(g)(3) of the Clean Water Act, 33 U.S.C. § 1319(g)(3).

Public notice of this settlement was provided as required by 40 C.F.R. § 22.45(b). The close of the public comment period was June 15, 2015 and EPA did not receive any public comments with respect to this matter.

Once the Final Order has been signed, I will file the fully executed Consent Agreement and Final Order with the Regional Hearing Clerk thereby resolving this matter. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Margery L. Adams".

Margery L. Adams
Senior Enforcement Counsel

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

IN THE MATTER OF)	Docket No. CWA-01-2015-0047
)	
Borrego Solar Systems, Inc.,)	CONSENT AGREEMENT
)	AND FINAL ORDER
Respondent.)	
)	
Proposing to Assess a Civil Penalty Under)	
Section 309(g) of the Clean)	
Water Act, 33 U.S.C. §§ 1319(g))	
)	

This Consent Agreement and Final Order (“CAFO”) is issued under the authority granted to the United States Environmental Protection Agency (“EPA”) by Section 309(g) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §§ 1319(g) and 1321(b)(6), as amended by the Oil Pollution Act of 1990, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22.

I. PRELIMINARY STATEMENT

1. EPA initiated this proceeding against Borrego Solar Systems, Inc. (“Borrego” or “Respondent”) pursuant to Section 309(g) of the CWA, 33 U.S.C. §§ 1319(g), by filing an administrative complaint against Respondents on May 8, 2015 (the “Complaint”).
2. The complete factual and jurisdictional basis for proposing the assessment of a civil penalty for violations at three solar power array sites in Warren, Massachusetts, is set forth in the Complaint and is incorporated herein by reference.
3. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), the State of Massachusetts has been given an opportunity to consult with EPA regarding the assessment of the administrative penalty for CWA violations against Respondent.

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EPA ORC WS
Office of Regional Hearing Clerk

4. Sections 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 Sections 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 issuance of such order.

II. CONSENT AGREEMENT

5. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint.

6. Respondent waives any defenses it may 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 hearing under Sections 309(g)(2)(B), 33 U.S.C. §§ 1319(g)(2)(B), and to any appeal of the Final Order in this matter under Sections 309(g)(8)(B), 33 U.S.C. §§ 1319(g)(8)(B). Respondent consents to the issuance of the Final Order included with this Consent Agreement without further adjudication.

IV. PENALTY

8. EPA proposes and Respondent consents to the assessment of a civil penalty in the amount of \$ 90,000.

V. PAYMENT TERMS

9. In agreeing to the penalty described in paragraph 8 above, EPA has taken into account the statutory penalty factors at Section 309(g)(3) of the CWA, 33 U.S.C. §§ 1319(g)(3).

10. Respondent shall pay a total penalty of \$ 90,000 for violations of Section 301 of the CWA, 33 U.S.C. §§ 1311, within ten (10) days of the date this Agreement becomes final.

Respondents shall make the payment of \$ 90,000 for the violations of Section 301 of the CWA by cashier's or certified check, payable to "Treasurer, United States of America," referencing the case name and docket number of this action (*In the matter of Borrego Solar Systems, Inc.*, No. CWA-01-2015-0047). The payment shall be mailed via regular U.S. Postal Service mail, to:

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

11. At the time of payment, Respondent shall simultaneously send notice of the payment and a copy of the checks to:

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

and

Margery Adams
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code: OES04-2)
Boston, MA 02109-3912

12. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. §§ 1319(g)(9), 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 the prevailing rates, from the date this Agreement 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 nonpenalty

payment 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.

VI. GENERAL PROVISIONS

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

14. 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 those payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

15. This CAFO does not constitute a waiver, suspension, or modification of the requirements of the CWA or any regulations or permits promulgated thereunder. Payment of the penalty pursuant to this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in the Complaint.

16. 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.

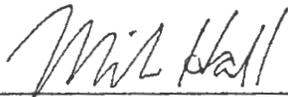
17. Nothing in this agreement shall be construed as prohibiting, altering, or in any

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.

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

19. 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.

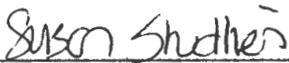
For Borrego Solar Systems, Inc.



Michael Hall
Chief Executive Officer
Borrego Solar Systems, Inc.

Date: October 22, 2015

For U.S. Environmental Protection Agency:



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

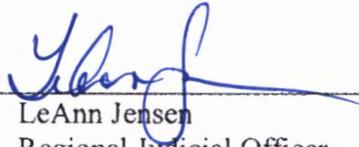
Date: 10/29/2015

FINAL ORDER

20. The forgoing consent agreement is hereby approved and incorporated by reference into this Order. The Respondent is hereby 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.

Date:

11/2/15



LeAnn Jensen

Regional Judicial Officer

U.S. Environmental Protection Agency, Region 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the matter of)	Docket No. CWA-01-2015-0047
)	
BORREGO SOLAR SYSTEMS, INC.)	CONSENT AGREEMENT AND
)	FINAL ORDER
)	
Respondent.)	
)	
)	

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Letter to Regional Judicial Officer enclosing a 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 Santiago
Regional Hearing Clerk
U.S. EPA, Region I (ORA18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Copy:

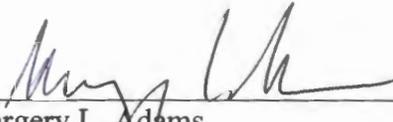
Harlan M. Doliner, Esq.
Counsel for Borrego Solar Systems, Inc.,
Verrill Dana, LLP
One Boston Place
Suite 1600
Boston, MA 02108-4407

Copy:

Robert McCallum
Massachusetts Department of Environmental Protection,
Western Region
436 Dwight Street
Springfield, MA 01103

Dated: _____

11/2/15



Margery L. Adams
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (OES04-2)
Boston, MA 02109-3912
Tel (617) 918- 1733
Adams.Margery@epa.gov