

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Laura Berry
Name of Case Attorney

12/20/12
Date

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

Case Docket Number CAA-01-2012-0116

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:

Joseph Lillis, President
7 JAN Sebastian Drive
Sandwich, MA 02563

Total Dollar Amount of Receivable \$ _____ Due Date: _____

SEP due? Yes _____ No _____ Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

1ST \$ 36,000.00 on JAN 19, 2013
2ND \$ 36,360.00 on MARCH 20, 2013
3RD \$ 36,180.00 on MAY 19, 2013
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



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 Post Office Square, Suite 100
BOSTON, MA 02109-3912

RECEIVED
2012 DEC 20 A 3:05

EPA ORC
OFFICE OF
REGIONAL HEARING CLERK

December 20, 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 JP Lillis Enterprises, Inc. d/b/a Cape Cod Ice*, Docket No. CAA-01-2012-0116

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,

A handwritten signature in blue ink that reads "Laura J. Berry".

Laura J. Berry
Enforcement Counsel

Enclosures

cc: Barry P. Fogel, Esq. (Respondent's counsel)
Jim Gaffey, OES, EPA Region 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED

2012 DEC 20 A 3:05

Docket No. CAA-01-2012-0116

EPA ORC
OFFICE OF
REGIONAL HEARING CLEER

CONSENT AGREEMENT
AND FINAL ORDER

IN THE MATTER OF)

JP LILLIS ENTERPRISES, INC.)
D/B/A CAPE COD ICE)

7 Jan Sebastian Drive)
Sandwich, MA 02563)

Respondent)

Proceeding under Section 113(d) of)
the Clean Air Act, 42 U.S.C. § 7413(d))

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, JP Lillis Enterprises, Inc. d/b/a Cape Cod Ice ("JP" or "Respondent"), the Parties herein, on September 28, 2012;

Respondent having received extensions to file an Answer and Request for Hearing until December 31, 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 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d), and the 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.

2. EPA’s Complaint alleged that Respondent failed to design and maintain a safe facility, taking such steps as are necessary to prevent releases of anhydrous ammonia from the refrigeration system (the “System”) at its ice manufacturing facility and cold storage warehouse in Sandwich, Massachusetts, in violation of the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), by failing to (a) have appropriate refrigeration system documentation; (b) provide mechanical ventilation in the machinery room; (c) develop and employ a comprehensive preventative maintenance program; (d) develop operating procedures; (e) train employees in the proper operation of the System; (f) properly label System components; (g) provide ammonia detectors and associated warning systems; and (h) provide an emergency shutdown switch for the System.

3. EPA’s Complaint also alleged that Respondent failed to minimize the consequences of any accidental releases of anhydrous ammonia that might occur from the System, in violation of the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), by failing to develop an adequate and appropriate emergency response plan based on the specific design and operation of its Sandwich, Massachusetts facility.

TERMS OF SETTLEMENT

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

5. 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 specific factual allegations contained in the Complaint, consents to the terms of this CAFO.

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

7. Respondent certifies that it is currently operating the Facility described in paragraph 11 of the Complaint in compliance with Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

8. Pursuant to Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and taking into account the relevant statutory penalty criteria, the facts alleged in the Complaint, and such other circumstances as justice may require, EPA has determined that it is fair and proper to assess a civil penalty of one hundred and eight thousand dollars (\$108,000) for the violations alleged in this matter.

9. 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 the foregoing paragraph.

10. Respondent shall pay the total amount of \$108,000 in installments according to the payment schedule identified in paragraph 11. Interest at a rate of three percent (3%) 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.

11. Respondent shall pay the total amount of \$108,000 according to the following schedule: a) payment of \$36,000 shall be made within thirty (30) calendar days of the effective date of this CAFO; b) payment of \$36,360 (\$36,000 principal plus \$360 accrued interest) shall be made

within ninety (90) days of the effective date; and c) payment of \$36,180 (\$36,000 principal plus \$180 accrued interest) shall be made within one hundred fifty (150) days of the effective date.

12. Respondent may accelerate its payments described in the payment schedule in paragraph 11, and thereby reduce its interest payments. If Respondent chooses to accelerate its payments, Respondent will notify EPA of the decision to do so in advance and inform EPA of a proposed date for each accelerated payment. Based on the date of each proposed accelerated payment, EPA will inform Respondent of the revised payment amount, including interest calculated as described in paragraph 10 above.

13. 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 docket number of this action (*In re JP Lillis Enterprises, Inc. d/b/a Cape Cod Ice*, Docket No. CAA-01-2012-0116) 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

In addition, at the time of payment, Respondent shall simultaneously send notice of the payment and copies of the 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

14. If Respondent fails to make any payment required by paragraph 11 by the required due date, the total penalty amount of \$108,000, plus all accrued interest (less payments already made), shall become due immediately to the United States upon such failure. Interest 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 13.

15. 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.

16. In the event that any portion of the civil penalty amount described in paragraph 10 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 as provided in 42 U.S.C. § 7413(d). 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 collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

17. 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.

18. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 113(d) of the CAA 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.

19. 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.

20. 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. Nothing

in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of Respondent to defend, appeal, or otherwise challenge any such action by EPA.

21. 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.

22. 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.

23. 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.

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

Date: 12-17-12

FOR RESPONDENT JP LILLIS ENTERPRISES, INC. D/B/A CAPE COD ICE


JP Lillis, President
Joseph Lillis, President
JP Lillis Enterprises, Inc. d/b/a Cape Cod Ice

Date: 12-12-12

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: 12/19/12



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

