

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Tonia Bandrowicz 11/26/13
Name of Case Attorney Date

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

Case Docket Number CWA-01-2012-0081

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:

William J. Squires, III
Bingham McCutchen LLP
One Federal Street
Boston, MA 02110-1726

Total Dollar Amount of Receivable \$ 14,000 Due Date: 12/26/13

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



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

November 26, 2013

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

RECEIVED
2013 NOV 26 A 11:07
EPA ORC
OFFICE OF
REGIONAL HEARING CLERK

Re: CWA Consent Agreement and Final Order
RE: Harbor Fuel Oil Corporation, Nantucket, Massachusetts
Docket No. CWA-01-2012-0081


Dear Ms. Santiago:

Enclosed for filing in the above-referenced action, please find the original and one copy of a Consent Agreement and Final Order settling this case.

Counsel had previously filed the original copy with the Headquarters Hearing Clerk. As the original of a Consent Agreement and Final Order must be filed with the Regional Hearing Clerk, Headquarters returned the original to the Regional Hearing Clerk who date stamped it with today's date. Counsel is now filing that original date stamped copy of the Consent Agreement and Final Order with the Regional Hearing Clerk and distributing copies to the Headquarters Hearing Clerk, the Presiding Officer, and Respondent's counsel.

Thank you for your attention to this matter.

Sincerely,


Tonia Bandrowicz
Senior Enforcement Counsel

Enclosure

cc: Sybil Anderson, Headquarters Hearing Clerk
M. Lisa Buschmann, Presiding Officer
William J. Squires, III
Mia Pasquerella, EPA (by LAN)
Joseph Canzano, EPA (by LAN)

CWA Consent Agreement and Final Order
Harbor Fuel Oil Corporation, Nantucket, Massachusetts
Docket No. CWA-01-2012-0081

CERTIFICATE OF SERVICE

I certify that the foregoing letter to the Regional Hearing Clerk and Consent Agreement and Final Order in the above-referenced case was transmitted to the following persons, in the manner specified, on the date below:

Original and one copy
hand-delivered:

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

Copy by Pouch Mail:

Sybil Anderson
Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Mail Code 1900R
1200 Pennsylvania Avenue
Washington, DC 20460-2001

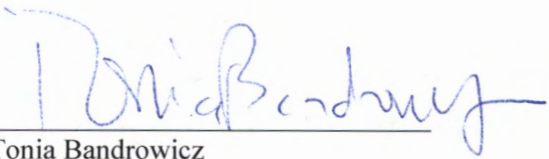
Copy by Pouch Mail :

The Honorable M. Lisa Buschmann
Administrative Law Judge and Presiding Officer
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900R
1200 Pennsylvania Avenue
Washington, DC 20460-2001

Copy by certified mail,
return receipt requested:

William J. Squires, III
Bingham McCutchen LLP
One Federal Street
Boston, MA 02110-1726

Dated: 11/26/13



Tonia Bandrowicz
Senior Enforcement Counsel
U.S. EPA – Region I
5 Post Office Square, Suite 100
Mail Code: OES04-4
Boston, MA 02109-3912
671-918-1734
bandrowicz.toni@epa.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

EPA ORC
OFFICE OF
REGIONAL HEARING CLERK

2013 NOV 26 A 11:04

RECEIVED

IN THE MATTER OF:)

Harbor Fuel Oil Corporation)
10 Airport Road)
Nantucket, MA 02554,)

Respondent)

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. CWA 01-2012-0081

This Consent Agreement and Final Order (“CAFO”) is proposed and entered into under the authority vested in the U.S. Environmental Protection Agency (“EPA”) by Section 311(b)(6)(B)(ii) of the Clean Water Act (“CWA”), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, and under the authority provided by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits, set forth at 40 C.F.R. Part 22 (“Part 22”).

STIPULATIONS AND FINDINGS

1. EPA initiated this proceeding against Harbor Fuel Oil Corporation (“Respondent”) pursuant to Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), by filing an Administrative Complaint, Docket No. CWA-01-2012-0081 (“Complaint”).

2. The Complaint alleges that Respondent’s violation of Section 311(j) of the CWA, § 1321(j), subjects Respondent to penalties up to the statutory maximum authorized under the CWA.

3. The factual and jurisdictional basis for proposing the assessment of civil penalties is set forth in the Complaint and incorporated herein by reference.

4. Section 311(b)(6)(C) of the CWA, 33 U.S.C. § 1321(b)(6)(C), and 40 C.F.R. § 22.45(b) provide that, prior to issuing an order assessing a penalty under Section 311(j) of the CWA, 33 U.S.C. § 1321(j), 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 penalty from December 18, 2012, through January 16, 2013. EPA has received no public comments regarding this matter.

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

6. Respondent admits the jurisdictional allegations contained in Paragraphs 1 through 3 of the Complaint and neither admits nor denies the facts and violations alleged in the Complaint. Nothing in this CAFO shall constitute or be construed as an admission by Respondent of any fact or allegation set forth in the Complaint or herein except for purposes of the issuance and enforcement of this CAFO.

7. Respondent certifies that it is currently operating and will continue to operate the Facility described in the Complaint in compliance with Section 311(j) of the CWA, 33 U.S.C. § 1321(j), and the Oil Pollution Prevention Regulations at 40 C.F.R. Part 112 promulgated thereunder.

8. Respondent waives any defenses it may have as to jurisdiction and venue over the allegations contained in the Complaint and consents to the terms of this CAFO.

9. Respondent waives its right to a judicial or administrative hearing on any issue of law or fact set forth in the Complaint.

10. Respondent waives its right to appeal any Final Order in this matter, and consents to the issuance of a Final Order without further adjudication.

CONSENT AGREEMENT

11. Based on the forgoing Stipulations and Findings, and taking into account the statutory penalty factors at Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), and under the authority of Section 311(b)(6)(B)(ii), EPA hereby orders and Respondent hereby consents that:

12. The Respondent shall pay a penalty of \$14,000 and complete the supplemental environmental project specified below for the violations of the CWA specifically alleged in the Complaint and continuing through to the date of this CAFO.

13. Within 30 calendar days of the date of the Final Order below, Respondent shall make payment of the amount specified in the preceding paragraph by a cashier's or certified check payable to "Environmental Protection Agency," and referencing the title and docket number of this action ("In the Matter of Harbor Fuel Oil Corporation, CWA-01-2012-0081") and "Oil Spill Liability Trust Fund – 311." The payment shall be mailed to:

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

14. Respondent shall simultaneously submit copies of the penalty payment check to:

Regional Hearing Clerk, RCA
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100

Boston, MA 02109-3912

and

Tonia Bandrowicz
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100 (OES04-3)
Boston, MA 02109-3912

Supplemental Environmental Project

15. The Respondent shall implement a Supplemental Environmental Project (“SEP”) involving the acquisition of an emergency response spill trailer (which shall be a 1998 Wells Cargo dual axle spill trailer or a reasonably equivalent spill trailer) along with associated equipment and supplies to be used to respond to oil spills at the Facility as well as off-site oil spills on Nantucket. The parties acknowledge that Respondent has, for many years, voluntarily performed spill responses for third parties on Nantucket as a community service. The parties agree that this SEP is intended to secure significant environmental or public health protection and benefits by allowing Respondent to provide spill response on Nantucket in a more timely and effective manner. In fulfillment of its obligations to implement the SEP, the Respondent shall spend no less than \$37,940, in total, for the: (a) acquisition of the emergency response spill trailer and associated equipment and supplies; (b) transportation of the trailer and associated equipment and supplies to the Facility (i.e., costs to bring it to the Island of Nantucket); (c) annual excise tax and insurance; (d) annual operation and maintenance costs for the trailer; (e) costs relating to drills and exercises involving the trailer and/or associated equipment; and (f) periodic re-stocking of equipment and supplies for the trailer after drills and emergency responses. The Respondent shall implement the SEP in accordance with the

following timeline:

- a. Within 45 days of the effective date of this CAFO (“SEP Commencement Date”), Respondent shall purchase the emergency response spill trailer and associated equipment and supplies;
- b. The Respondent’s obligations to implement the SEP shall terminate on the earlier of (i) the eighteen (18) month anniversary of the SEP Commencement Date or (ii) the date on which Respondent has expended \$37,940 to implement the SEP in accordance with Paragraph 15 of this CAFO (the “SEP Completion Date”); and
- c. It is the Respondent’s intention to continue to maintain and use the spill trailer and associated equipment and supplies after the SEP Completion Date, however, such future maintenance and use shall not be subject to this CAFO.

16. Respondent certifies that it has not applied for or received, and will not in the future apply for or receive credit as a SEP or other penalty offset in any other enforcement action (whether brought by the federal government or not) for the SEP described herein.

17. The Respondent certifies that 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 proposed herein. The Respondent further certifies that, to the best of its 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 proposed 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 purpose 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.

18. Respondent shall submit a SEP Completion Report within 30 days of the SEP Completion Date. 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 of implementing the SEP;
- d. Certification by Respondent that the SEP was fully implemented pursuant to the provisions of this CAFO; and
- e. A description of the environmental and public health benefits resulting from implementation of the SEP.

Respondent shall submit the report required by this CAFO to:

Joseph Canzano
Water Technical Unit
Office of Environment Stewardship
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: OES04-04
Boston, MA 02114-2023

19. Respondent agrees that failure to submit the report required by the preceding paragraph shall be deemed a violation of this CAFO, and Respondent shall become liable for stipulated

penalties under this CAFO.

20. Following receipt of the SEP Completion Report described above, EPA will either a) accept the SEP Completion Report or b) reject the SEP Completion Report and notify Respondent, in writing, of deficiencies in the SEP Completion Report and any additional actions and/or information required to be taken or supplied by Respondent.

21. If Respondent objects to any EPA notification of deficiency or disapproval given pursuant to the previous paragraph, Respondent shall notify EPA in writing of its objection within 10 days of receipt of such notification. EPA and Respondent shall have an additional 30 days from the receipt by the EPA of the notification of objection to reach agreement. If agreement cannot be reached on any such issue within this 30-day period, EPA shall provide a written statement of its decision 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 such deficiency or failure to comply with the terms of this CAFO. In the event the SEP is not completed as contemplated hereby, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with the CAFO.

22. In the event that Respondent fails to comply, in any material respect, with any of the terms or provisions of this CAFO relating to the performance of the SEP described in this CAFO and/or to the extent that the actual expenditures for the SEP does not equal or exceed \$37,940 as required under Paragraph 15 of this CAFO, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- a. Except as provided in subparagraph b. immediately below, if the SEP has not been completed satisfactorily pursuant to this CAFO, Respondent shall

pay a stipulated penalty to the United States in the amount equal to \$37,940, plus interest from the effective date.

- b. If the SEP is not completed in accordance with this CAFO, but (i) the Complainant determines that the Respondent made good faith and timely efforts to complete the SEP and (ii) the Respondent certifies, with supporting documentation, that it expended at least \$34,146 for the SEP (i.e., 90 percent of the \$37,940 required under Paragraph 15 of this CAFO), Respondent shall not be liable for any stipulated penalty.
- c. If the SEP is completed in accordance with this CAFO but the Respondent spent less than \$34,146 for the SEP, Respondent shall either (i) pay a stipulated penalty to the United States in the amount equal to \$37,940 less the actual amount spent on the SEP.
- d. If the SEP is completed in accordance with this CAFO, and the Respondent spent at least \$34,146, Respondent shall not be liable for any stipulated penalty.
- e. For failure to timely submit the SEP Completion Report required by Paragraph 18 of this CAFO, Respondent shall pay a stipulated penalty in the amount of \$100 for each day it is late until the report is submitted.

23. The determination of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the reasonable discretion of EPA.

24. Respondent shall pay stipulated penalties within 15 days of receipt of written demand

by EPA for such penalties. Stipulated penalties 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. Method of payment shall be in accordance with the provisions of Paragraph 13 above. Interest and late charges shall be paid as stated herein.

25. If any event occurs which causes or may cause delays in the completion of the SEP as required under this Consent Agreement:

- a. The Respondent shall notify Complainant in writing not more than 10 days after the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of the Respondent's right to request an extension of its obligation under this CAFO based on such incident.
- b. If the Parties agree that the delay or anticipated delay in compliance with this CAFO has been or will be caused by circumstances beyond the control of Respondent, the time for performance hereunder may be extended for a

period no longer than the delay resulting from such circumstances. In such event, the Parties shall stipulate to such extension of time.

- c. In the event that the EPA does not agree that a delay in achieving compliance with the requirements of this CAFO has been or will be caused by circumstances beyond the control of the Respondent, EPA will notify Respondent in writing of its decision and any delays in the completion of the SEP shall not be excused.
- d. The burden of proving that any delay is caused by circumstances entirely beyond the control of the Respondent shall rest with the Respondent. Increased costs or expenses associated with the implementation of actions called for by this CAFO shall not, in any event, be a basis for changes in this CAFO or extensions of time under subparagraph b. of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.
- e. If the Parties agree that compliance with any portion of the SEP described in this CAFO cannot be completed due to circumstances beyond the control of Respondent, the SEP may be modified or another SEP project may be proposed by Respondent, subject to the approval of EPA. In such event, the Parties shall stipulate to such modification.

26. Any public statement, oral or written, including on a website, in which Respondent refers 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 Clean Water Act.”

General Provisions

27. Pursuant to Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), failure by the Respondent to pay the penalty amount assessed by Paragraph 12 of this CAFO (“Respondent’s Penalty Amount”) in full by the date required shall subject the Respondent to a civil action to collect the assessed penalty, plus interest at the prevailing rates from the effective date of the CAFO. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. Further, under Section 311(b)(6)(H) of the CWA, 33 U.S.C. § 1321(b)(6)(H), if Respondent fails to pay on a timely basis Respondent’s Penalty Amount, Respondent shall be required to pay, in addition to such amount and interest, attorneys fees and 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 (20%) of the aggregate amount of Respondent’s Penalty Amount and nonpayment penalty which is unpaid as of the beginning of such quarter. Interest will be assessed pursuant to 31 C.F.R. § 901.9(b), promulgated pursuant to 31 U.S.C. § 3717.

28. The 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.

29. The provisions of this CAFO shall be binding upon Respondent and Respondent’s officers, directors, and successors or assigns.

30. Except as described in Paragraph 27 above, each party shall bear its own costs and attorneys fees in this proceeding.

31. This CAFO shall not limit the authority of the United States to enforce the underlying substantive legal requirements of this administrative penalty assessment, whether administratively or judicially.

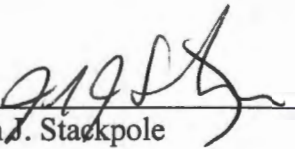
32. This CAFO does not constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251 *et seq.*, or any regulations promulgated thereunder.

33. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 311(j) of the CWA, for the violations of the CWA specifically alleged in the Complaint and herein through the date of this CAFO, including, without limitation, violations of 40 C.F.R. Part 112. Compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to other federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations. This CAFO in no way relieves Respondent or its employees of any criminal liability. Nothing in this CAFO shall be construed to limit the authority of the United States to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public.

34. All of Respondent's obligations under this CAFO shall cease upon (a) the Respondent's payment of the penalty in accordance with Paragraph 12 of this CAFO and (b) EPA's acceptance of the SEP Completion Report. In the event EPA does not accept the SEP Completion Report, Respondent's obligations under this CAFO shall cease upon Respondent's payment of the applicable Stipulated Penalty under Paragraph 22 of this CAFO or as otherwise agreed to, in writing, between EPA and the Respondent.

35. The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to enter into the terms and conditions of this CAFO and legally bind Respondent.


FOR RESPONDENT



John J. Stackpole
President
Harbor Fuel Oil Corporation

Date: 11-08-2013

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY



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

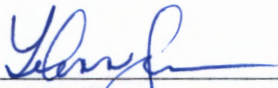
Date: 11/18/13

FINAL ORDER

In accordance with 40 C.F.R. § 22.18(b), the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order.

Respondent is ordered to comply with the terms of the referenced Consent Agreement. This Final Order shall become final 30 days from today pursuant to Section 311(b)(6)(D) of the CWA, 33 U.S.C. § 1321(b)(6)(D).

U.S. ENVIRONMENTAL PROTECTION AGENCY



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

Date: 11/18/13