

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Rivera for William D. Chin 6/26/08
Name of Case Attorney Date

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

Case Docket Number CWA-01-2008-0051

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:

High Pines Corporation
60 Country Club Way
Kingston, MA 02364

Total Dollar Amount of Receivable \$ 12,500 Due Date: 8/3/08

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 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

June 26, 2008

RECEIVED

2008 JUN 26 P 1:09

BY HAND

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
One Congress Street
Suite 1100, Mail Code RAA
Boston, MA 02114-2023

CLERK

RE: In the Matter of: High Pines Corporation,
Docket No. CWA-01-2008-0051

Dear Ms. Santiago:

I enclose for filing in the above-referenced matter the original and one copy of a Consent Agreement and Final Order and a Certificate of Service.

Thank you for your assistance.

Sincerely,

William D. Chin

William D. Chin
Enforcement Counsel

Enclosures

cc: John Flemming, Esq.

In the Matter of: High Pines Corporation
Docket No. CWA-01-2008-0051

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order has been sent in the following manner on the date noted below.

Original and one copy,
hand-delivered to:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
One Congress Street
Suite 1100 (RAA)
Boston, MA 02114-2023

One Copy,
by Certified Mail to:

John Flemming, Esq.
Law Office of John Flemming
35 India Street, 3rd Floor
Boston, MA 02110

Dated: _____

6/26/08

William D. Chin

William D. Chin
Enforcement Counsel
U.S. EPA, Region 1
One Congress Street
Suite 1100 (SEL)
Boston, MA 02114-2023
Tel: (617) 918-1728

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED

In the Matter of:)
)
High Pines Corporation) Docket No. 2008 JUN 26 P 1:09
60 Country Club Way) CWA-01-2008-0051
Kingston, MA 02364)
) CONSENT AGREEMENT AND
) FINAL ORDER
)
Respondent.) Action for Class II
) Civil Penalty Under
) Section 309(g)
) of the Clean Water Act

I. INTRODUCTION

1. Complainant, the United States Environmental Protection Agency ("EPA"), Region 1, alleges that Respondent, High Pines Corporation ("HPC") has violated Sections 301(a) and 308 of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1311(a) and 1318.

2. Complainant and Respondent agree to simultaneously commence and settle this action by the issuance of this Consent Agreement and Final Order ("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.

Statutory and Regulatory Authority

3. Complainant takes this action under the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for violations of Section 301(a) and 308 of the CWA. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), Complainant will consult with the Massachusetts Department of Environmental Protection ("MA

DEP") prior to the assessment of a penalty in this action.

4. 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.

5. 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."

6. 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.

7. 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.

8. 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.

9. 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.

10. 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 the disturbance of five acres or more of total land area.

11. In February 1998, EPA issued the NPDES General Permit for Storm Water Discharges from Construction Activities ("1998 CGP"), 63 Fed. Reg. 7858 (Feb. 17, 1998). The 1998 CGP was effective February 17, 1998 and expired February 17, 2003. In July 2003, EPA re-issued the CGP ("2003 CGP"), 68 Fed. Reg. 45817 (July 1, 2003). The 2003 CGP was effective July 1, 2003 and expires July 1, 2008.¹ The 2003 CGP was later modified effective on January 15, 2005. [See 69 Fed. Reg. 76743 (December 22, 2004).] The 2003 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).

12. To obtain coverage under the 2003 CGP, Part 2 of the 2003 CGP requires "operators" to submit a Notice of Intent

¹In Massachusetts, the 2003 CGP became effective on August 4, 2003 and expires August 4, 2008. [See 68 Fed. Reg. 45817 (August 4, 2003).]

("NOI"). Appendix A of the 2003 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 which are necessary to ensure compliance with a storm water pollution prevention plan for the site or other permit conditions."

13. Part 2, Subpart 2.3 of the 2003 CGP requires 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.

Allegations

14. Indian Pond Estates (the "Site") is located at Country Club Way in Kingston, Massachusetts. Since construction began in approximately 1987, the site has been developed for residential housing and for a golf course. The site encompasses several hundred acres and is expected to have approximately 350 homes when completed. As of November 2007, at least 140 homes and the golf course have been built as part of the project.

15. HPC is a corporation established under the laws of the Commonwealth of Massachusetts, with a principal office at 60 Country Club Way in Kingston, Massachusetts. HPC is an owner and developer of the Site.

16. Storm water from the Site is generally controlled and kept on-site through the use of retention ponds with subsurface leaching.

17. On June 7, 2006 and November 25, 2006, however, storm water from the Site over-topped the bank of a retention pond and discharged silt into a nearby wetlands and into Third Brook. Third Brook eventually flows into the Jones River, which in turn eventually discharges into Kingston Bay.

18. On June 7, 2006 and November 25, 2006, Respondent was not authorized to discharge storm water from the Site under the 2003 CGP or under an individual NPDES permit.

19. From June 7, 2006 until at least November 25, 2006, Respondent failed to file for coverage under the 2003 CGP or to apply for an individual NPDES permit.

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

21. Respondent is an "operator" of the Site, as defined at Appendix A of the 2003 CGP.

22. The retention ponds on the Site are "point sources," as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

23. The June 2006 and November 2006 storm water discharges from the Site contained "pollutant[s]" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

24. The June 2006 and November 2006 storm water discharges

from the Site were "discharges of pollutants," as defined at Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

25. The June 2006 and November 2006 storm water discharges from the Site were "storm water discharges from an industrial activity," as defined at 40 C.F.R. § 122.26(b)(14)(x).

26. Third Brook, the Jones River and Kingston Bay are "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).

27. On June 7, 2006 and November 25, 2006, Respondent discharged storm water associated with industrial activity within the meaning of 40 C.F.R. § 122.26, from point sources to waters of the United States. These discharges of storm water associated with industrial activity from these point sources to waters of the United States without a NPDES permit violated Section 301(a) of the CWA.

28. Respondent's failure to file for coverage under the 2003 CGP or to apply for an individual NPDES permit from June 7, 2006 until at least November 25, 2006 violated Section 308(a) of the CWA.

II. CONSENT AGREEMENT

The parties have agreed to a settlement on the following terms:

Terms of Settlement

29. The provisions of this CAFO shall apply to and be binding on Respondent, its officers, directors, successors and assigns until Respondent has completed all of the obligations required by this CAFO.

30. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO and also waive any defenses it may have as to jurisdiction and venue. Respondent neither admits nor denies the facts and violations alleged in this CAFO. Respondent hereby consents to the terms of this CAFO.

31. Respondent hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in this CAFO.

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

33. Section 309(g) of the CWA authorizes EPA to assess a civil penalty of up to \$10,000 per day of violation of Sections 301(a) and 308 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 that occurred after March 15, 2004 are subject to a penalty of up to \$11,000 per day of violation with a maximum penalty of \$157,500.

34. Taking 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), Complainant has determined that it is fair and proper that Respondent pay a total civil penalty in the amount of \$12,500 in settlement of this matter.

35. Respondent shall pay the civil penalty set forth in this CAFO no later than ten (10) calendar days after the effective date of this CAFO.

36. This CAFO shall be effective thirty (30) calendar days after its issuance by the Regional Judicial Officer.

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

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

Respondent shall also note the name ("In the Matter of: High Pines Corporation") and docket number ("CWA-01-2008-0051") of this matter on the payment check, and shall provide copies of the check along with a cover letter to:

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
One Congress Street
Suite 1100 (RAA)
Boston, MA 02114-2023

and to:

William D. Chin

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

38. Failure by Respondent to pay in full the civil penalty amount set forth in this CAFO shall subject Respondent to a civil action to collect the assessed penalty, plus interest at currently prevailing rates from the date of issuance of the Final Order. 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. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), 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 an additional 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 at the beginning of each quarter. In any such collection action, the validity, amount and appropriateness of the penalty and of this CAFO shall not be subject to review.

Public Notice

39. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), Complainant is providing 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 submitted timely comments on this penalty proposal 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

40. 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

41. All penalties, interest, and other charges shall represent civil penalties assessed by EPA, and shall not be deductible for federal taxes purposes.

42. Compliance with this CAFO, including payment of the penalties, interest, or other charges, does not waive, suspend or modify Respondent's continuing obligation to comply with the CWA, and with other applicable federal, state or local laws, regulations or requirements, including any separate compliance order issued under Section 309(a) of the CWA concerning the violations alleged in this CAFO.

43. Issuance of this CAFO constitutes a full and complete

settlement by EPA of all claims for administrative civil penalties pursuant to Sections 309(d) or (g) of the CWA, 33 U.S.C. §§ 1319(d) or (g), for all past violations of the CWA specifically alleged herein.

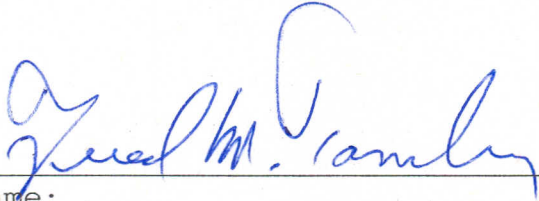
44. Issuance of this CAFO does not constitute a settlement by EPA of its right to enforce the substantive legal requirements underlying this administrative penalty assessment, whether administratively or judicially, pursuant to Sections 309(a), (b) and (c) of the CWA, 33 U.S.C. §§ 1319(a), (b) and (c), or Section 504 of the CWA, 33 U.S.C. § 1364.

45. Except as described in Paragraph 38, each party shall bear its own costs and fees in this action.

46. 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 PARTY enters into this CAFO for In the Matter of:
High Pines Corporation, Docket No. CWA-01-2008-0051.

For High Pines Corporation:



Name:
Title:
High Pines Corporation

April 22, 2008
Date

THE UNDERSIGNED PARTY enters into this CAFO for In the Matter of:
High Pines Corporation, Docket No. CWA-01-2008-0051.

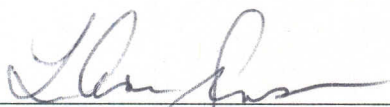
For U.S. EPA, Region 1:

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

05/12/08
Date

III. FINAL ORDER

Pursuant to Section 309(g) of the CWA, the above Consent Agreement is hereby approved and incorporated by reference into this Order. Respondent is ordered to comply with the terms of the above Consent Agreement. This Order shall become effective thirty (30) days after the date of issuance.



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

6-24-08

Date