

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Jeffrey Kopf 1/3/17  
Name of Case Attorney Date

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

Case Docket Number CWA-01-2017-0009

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:

J.F. White Contracting Company  
10 Burr Street  
Framingham, MA 01701 e'

MA Dept of Transportation  
10 Park Plaza, Suite 4160  
Boston, MA 02116

Total Dollar Amount of Receivable \$ 21,600 Due Date: 1/15/17

SEP due? Yes  No  Date Due \_\_\_\_\_

Installment Method (if applicable)

INSTALLMENTS OF:

- 1<sup>st</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 2<sup>nd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 3<sup>rd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 4<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_
- 5<sup>th</sup> \$ \_\_\_\_\_ 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

January 3, 2017

## VIA HAND DELIVERY

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



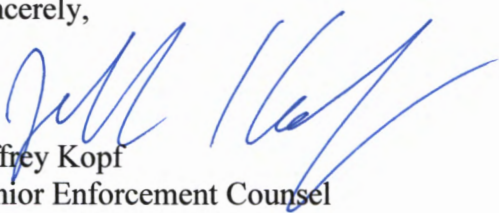
Re: In the Matter of: J.F. White Contracting Co. and Massachusetts Department of Transportation, Docket No. CWA-01-2017-0009

Dear Ms. Santiago,

Enclosed for filing, please find a Consent Agreement and Final Order (CAFO) both initiating and settling the matter referenced above.

Thank you for your attention to this matter.

Sincerely,



Jeffrey Kopf  
Senior Enforcement Counsel  
U.S. EPA, Region 1

Enclosure

cc: Tracy W. Klay, Acting Deputy General Counsel/Aeronautics Counsel  
MassDOT and MBTA  
Robin Main, Esq., Hinckley Allen Snyder LLP

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

\_\_\_\_\_  
IN THE MATTER OF )  
 )  
J.F. White Contracting Company )  
10 Burr St. )  
Framingham, Massachusetts 01701 )  
 )  
and )  
 )  
Massachusetts Department of )  
Transportation )  
10 Park Plaza, Suite 4160 )  
Boston, Massachusetts 02116 )  
 )  
 )  
Deerfield I-91 Construction Site )  
Deerfield, Massachusetts )  
\_\_\_\_\_ )

Docket No. CWA-01-2017-0009

**CONSENT AGREEMENT AND  
FINAL ORDER**



The Regional Administrator of the United States Environmental Protection Agency, Region 1 (“EPA”) issues this Consent Agreement and Final Order (“CAFO”) to J.F. White Contracting Company (“J.F. White”) and the Massachusetts Department of Transportation (“MassDOT”) (“Respondents”). EPA alleges that Respondents violated Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a). The parties agree to resolve this action by the issuance of this CAFO as provided under 40 C.F.R. § 22.13(b) and 22.18(b)(2) 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 (“Part 22”).

CONSENT AGREEMENT AND FINAL ORDER  
*In re: J.F. White Contracting Company and MassDOT*  
Docket No. CWA-01-2017-0009

US EPA, REGION 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

## **I. DESCRIPTION OF VIOLATIONS**

1. EPA alleges that Respondents discharged stormwater containing pollutants into navigable waters of the United States, in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

### **Statutory and Regulatory Authority**

2. EPA takes this action under the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g). Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1) and 40 C.F.R. § 22.38(b), EPA has notified the Commonwealth of Massachusetts of this action.

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

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(5) of the CWA, 33 U.S.C. § 1362(5), defines "person" to include "an individual, corporation, [or] partnership."

6. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines "pollutant" to include, inter alia, dredged spoil, garbage, rock, sand and cellar dirt.

7. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as

“the waters of the United States, including the territorial seas.”

8. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

9. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to include “any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.”

10. Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B), specifies that a NPDES permit is required for any stormwater “discharge associated with industrial activity.” *See also* 40 C.F.R. § 122.26(a)(1)(ii).

11. 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, among other things, the development and issuance of NPDES permits pursuant to CWA section 402, 33 U.S.C. § 1342.

12. Pursuant to Sections 308(a) and 402 of the CWA, EPA promulgated stormwater discharge regulations at 40 C.F.R. § 122.26.

13. Forty C.F.R. § 122.26(b)(13) defines “storm water” to include storm water runoff, snow melt runoff, and surface runoff and drainage.

14. Forty C.F.R. § 122.26(b)(14)(x) defines “storm water discharge associated with industrial activity” to include stormwater discharges from construction activities, including clearing, grading and excavation activities, that result in a disturbance of five

acres or more of total land area.

15. 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.

16. 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 FR 12286 (February 29, 2012)]. The 2012 CGP authorizes, subject to conditions contained therein, the discharge of pollutants in stormwater runoff associated with construction activities, including construction activities within the Commonwealth of Massachusetts (Permit Number: MAR100000).

17. Part 1.4 of the 2012 CGP requires “operators” to submit a notice of intent (“NOI”) to seek coverage for stormwater discharges associated with construction activities to EPA at least fourteen days prior to commencing construction.

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

19. Prior to submitting an NOI, Part 7 of the 2012 CGP requires operators to develop an adequate stormwater pollution prevention plan (“SWPPP”) addressing the portions of the project for which they are operators. The SWPPP must meet specific requirements

and include certain information such as: a list of all other site operators (Part 7.2.4); the sequence and estimated dates for construction activities (Part 7.2.5); a site map that includes, among other things, stormwater discharge locations and locations of stormwater control measures (Part 7.2.6); and a description of all stormwater control measures that will be installed and maintained to meet the requirements of Part 2 of 2012 CGP (Part 7.2.10).

20. Part 2 of the 2012 CGP 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.”

21. Part 2.2 of the 2012 CGP sets forth the general erosion and sediment control requirements applicable to all sites, including those related to the protection of storm drain inlets (Part 2.1.2.9).

22. Part 2.2 of the 2012 CGP sets forth requirements for the stabilization of exposed portions of a site. Part 2.2.1.1 of the 2012 CGP requires initiation of soil stabilization measures immediately whenever earth-disturbing activities have permanently or temporarily ceased on any portion of a construction site. Earth-disturbing activities have permanently ceased when clearing and excavation within any area of a construction site that will not include permanent structures has been completed. Earth-disturbing activities have temporarily ceased when clearing, grading, and excavation within any area of the

site that will not include permanent structures will not resume for a period of 14 or more calendar days, but such activities will resume in the future. In addition, Part 2.2.2 of the 2012 CGP sets forth the criteria for adequate stabilization.

23. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), provides for the assessment of penalties for violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

### **General Allegations**

24. J.F. White and MassDOT are operators of the I-91 Deerfield River and Stillwater Road and Lower Road bridges construction project located in Deerfield, Massachusetts (“the Site”). The project at the Site involves the replacement of two pairs of bridges and the relocation of a section of the northbound lanes of I-91. The estimated area to be disturbed at the Site for the Project was approximately 32 acres.

25. MassDOT is an agency of the Commonwealth of Massachusetts and has its principle office at 10 Park Plaza, Boston, Massachusetts.

26. J.F. White is a Massachusetts corporation with a principal place of business at 10 Burr St., Framingham, Massachusetts.

27. Respondents are “persons” as defined at Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

28. Respondents both submitted NOIs to EPA for coverage under the 2012 CGP for the Site and received coverage under the 2012 CGP (Permit Tracking number MAR12AC41 for J.F. White) (Permit Tracking number MAR12AC55 for MassDOT).

29. Respondents are “operators” at the Site as defined at Appendix A the 2012 CGP and 40 C.F.R. § 122.2.



30. The stormwater discharges from the Site are “storm water discharges from an industrial activity,” as defined at 40 C.F.R. § 122.26(b)(14)(x).

31. The stormwater discharges from the Site are conveyed through ditches, culverts, swales, gullies, channels, catch basins and storm drains from disturbed areas of the Site and are allegedly contaminated with sand, dirt, sediment, suspended solids, residues of construction material, and turbidity.

32. Any sand, dirt, sediment, suspended solids, residues of construction material, and turbidity contained in the stormwater discharges from the Site are “pollutant[s]” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6). The stormwater discharges from the Site allegedly result in the “discharge of pollutants,” as defined at Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

33. The ditches, culverts, swales, gullies, and channels at the Site and the various storm drains and catch basins along the highway are “point source[s]” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

34. The stormwater discharges from the Site flow offsite into the Deerfield River which flows into the Connecticut River which flows into Long Island Sound.

35. The Deerfield River, the Connecticut River and Long Island Sound are all “navigable waters,” as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

36. On April 12, 2016, EPA Region 1 conducted a CWA compliance inspection of the Site to evaluate Respondents compliance with the 2012 CGP (the “EPA Inspection”).

37. On April 12, 2016, EPA alleges that not all drain inlets were properly protected.

38. On April 12, 2016, and based on additional information EPA has gathered, EPA

alleges that Respondents had failed to stabilize the disturbed portions of the median and shoulder of the roads south of the Deerfield River in and around March 2016.

### **Alleged Violations**

#### *Failure to Comply with CGP*

39. By failing to ensure that all storm drain inlets were properly protected in April 2016, Respondents violated Part 2.1.2.9 of the CGP.

40. By failing to stabilize the disturbed portions of the median and shoulder of the roads south of the Deerfield River from January through March 2016, Respondents violated Part 2.2.1.1 of the 2012 CGP.

41. By discharging stormwater associated with industrial activity into waters of the U.S. 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 the conditions in the 2012 CGP, Respondents violated Section 301(a) of the CWA from January through April 2016.

42. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), provides for the assessment of penalties for violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

## **II. CONSENT AGREEMENT**

43. EPA and Respondents agree that settlement of this cause of action is in the public interest and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter. Therefore, before taking any testimony, upon the pleadings, 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:

44. Respondents admit the jurisdictional allegations set forth in Section I above and

hereby waive any defenses they might have as to jurisdiction and venue.

45. Respondents neither admit nor deny the factual allegations contained in Section I above or that any violations of the CGP or CWA occurred.

#### **Waiver of Rights**

46. Respondents waive the right to a hearing under Sections 309(g)(2)(B) of the CWA, 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) of the CWA, 33 U.S.C. § 1319(g)(8)(B). Respondents consents to the issuance of a Final Order without further adjudication.

#### **Penalty**

47. EPA proposes, and Respondents consent to, the assessment of a civil penalty of \$21,600 for all violations contained in this CAFO.

#### **Payment Terms**

48. In agreeing to the penalty described in paragraph 47 above, EPA has taken into account the statutory penalty factors at Sections 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3).

49. Respondents shall pay a total penalty of \$21,600 for violations of Section 301 of the CWA, 33 U.S.C. § and 1311.

50. Respondents shall make the payments in the following manner:

- a. \$21,600 shall be due within 10 calendar days of the final date of this CAFO;
- b. Respondents shall make this payment by cashier's or certified check, payable to "Treasurer, United States of America,"

referencing the title and docket numbers of the action (“*In the Matter of: J.F. White Contracting Company and MassDOT*, Docket No. CWA-01-2017-0009). 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

51. Respondents shall note the case name and respective docket number (*In the Matter of: J.F. White Contracting Company and MassDOT*, Docket No. CWA-01-2017-0009) in cover letters accompanying the payments and shall provide copies of the checks and letters to:

Wanda I. 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

and

Jeffrey Kopf, Senior Enforcement Counsel  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code OES04-4  
Boston, MA 02109-3912

52. 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, Respondents agree to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 U.S.C. § 162(f), and further agree not to use those payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

### **General Provisions**

53. Pursuant to Sections 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), a failure by the Respondents to pay the penalty assessed by this CAFO in full by its due date shall subject Respondents 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.

54. The Final Order shall be binding upon Respondents and Respondents' officers, directors, agents, servants, employees, successors, or assigns.


55. The Final Order does not constitute a waiver, suspension, or modification of the requirements of CWA, 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 Consent Agreement resolves only Respondents' alleged liability for federal civil penalties for the alleged violations herein.

56. Except as described in paragraph 53 of this Consent Agreement, each party shall bear its own costs and attorney's fees in connection with the action resolved by this CAFO.

57. The undersigned representative of each Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind said Respondent to it.

FOR J.F. White Contracting Company



Albert Perez Baucells, Exec. Vice President  
J.F. White Contracting Company

Date: 11/8/2016

FOR Massachusetts Department of Transportation

\_\_\_\_\_  
Thomas J. Tinlin, Highway Administrator,  
Massachusetts Department of Transportation

Date: \_\_\_\_\_

FOR U.S. Environmental Protection Agency



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

Date: 11/22/16

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56. Except as described in paragraph 53 of this Consent Agreement, each party shall bear its own costs and attorney's fees in connection with the action resolved by this CAFO.


57. The undersigned representative of each Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind said Respondent to it.

FOR J.F. White Contracting Company

\_\_\_\_\_  
Peter White, President  
J.F. White Contracting Company

Date: \_\_\_\_\_

FOR Massachusetts Department of Transportation

  
\_\_\_\_\_  
Thomas J. Tinlin, Highway Administrator,  
Massachusetts Department of Transportation

Date: 11-16-18

FOR U.S. Environmental Protection Agency

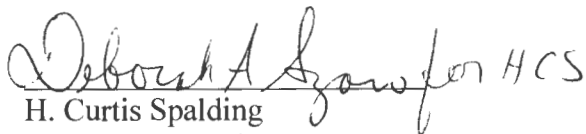
\_\_\_\_\_  
Susan Studlien, Director  
Office of Environmental Stewardship  
U.S. EPA, Region 1

Date: \_\_\_\_\_

### III. FINAL ORDER

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

Respondents are 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 Administrator 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.

  
H. Curtis Spalding  
Regional Administrator  
U.S. EPA, Region 1

Date: 1/3/17



*In the matter of J.F. White Contracting Co. and Massachusetts Department of Transportation*  
Docket No. CWA-01-2017-0009

**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,  
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, by Certified Mail,  
Return Receipt Requested


Tracy W. Klay, Acting Deputy General  
Counsel/Aeronautics Counsel  
MassDOT and MBTA  
10 Park Plaza, Room 7760  
Boston, MA 02116

and

Robin Main, Esq.  
Hinckley Allen Snyder LLP  
100 Westminster St., Suite 1500  
Providence, RI 02903

Dated: \_\_\_\_\_

1/3/17

  
\_\_\_\_\_  
Jeffrey Kopf

Senior Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100 (OES04-3)  
Boston, MA 02109-3912  
Tel (617) 918-1796  
Fax (617) 918-0796