

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for

Toni Bandrowicz
Name of Case Attorney

3/26/15
Date

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

Case Docket Number RCRA-01-2014-0068

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:

Hilton Oil Co., Inc.
101 South Union Street
Lawrence, MA 01843

Total Dollar Amount of Receivable \$ 27,000 Due Date: 4/26/15

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: _____
in the Financial Management Office

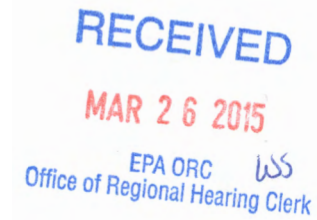
_____ Phone Number



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
ONE CONGRESS STREET SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

BY HAND

MAR 26 2015



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

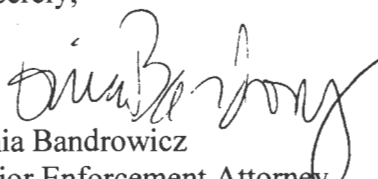
Re: In the Matter of Hilton Oil Co., Inc. (Lawrence, MA)
Docket No. RCRA 01-2014-0068

Dear Ms. Santiago:

In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2), enclosed please find a Consent Agreement and Final Order that will simultaneously commence and settle the above-referenced action.

Thank you for your attention to this matter.

Sincerely,


Tonia Bandrowicz
Senior Enforcement Attorney
U.S. Environmental Protection Agency
5 Post Office Square, Suite 100
Mail Code OES 04-3
Boston, MA 02109-3912

Enclosure

cc: David Bernardin, Esq.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
BEFORE THE ADMINISTRATOR**

RECEIVED

MAR 26 2015

EPA ORC
Office of Regional Hearing Clerk

IN THE MATTER OF:)	
)	
Hilton Oil Co., Inc.)	Consent Agreement and
101 South Union Street)	Final Order
Lawrence, Massachusetts 01843,)	
)	
Respondent.)	EPA Docket No. RCRA-01-2014-0068
_____)	

I. STATEMENT OF AUTHORITY AND JURISDICTION

1. Pursuant to the authority vested in the United States Environmental Protection Agency ("EPA") by Section 9006 of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6991e, and in accordance with Section 22.13(b) of 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 ("Consolidated Rules") and applicable delegations of authority, EPA, Region I issues, and Hilton Oil Company, Inc. ("Hilton" or "Respondent") agrees, to this Consent Agreement and Final Order ("CAFO").
2. EPA takes this action based on its allegations that the Respondent has violated Section 9003 of RCRA, 42 U.S.C. § 6991b, and the federally-approved UST requirements promulgated by Massachusetts at 527 C.M.R 9.00.
3. Notice of this action has been given to Commonwealth of Massachusetts ("Massachusetts") pursuant to Section 9006(a)(2) of RCRA, 42 U.S.C. § 6991e(a)(2).

II. STATUTORY AND REGULATORY FRAMEWORK

4. The RCRA of 1976, which amended the Solid Waste Disposal Act of 1965, addresses solid (Subtitle D) and hazardous (Subtitle C) waste management activities. To respond to the increasing threat to groundwater posed by leaking USTs, in 1984 Congress added

Subtitle I to RCRA, Sections 9001 *et seq.* of RCRA, 42 U.S.C. §§ 6991 *et seq.* Subtitle I required EPA to develop a comprehensive regulatory program for USTs storing petroleum or certain hazardous substances. The UST regulations promulgated by EPA are codified at 40 C.F.R. Part 280.

5. Pursuant to RCRA Section 9004, 42 U.S.C. § 6991c, EPA may authorize a state to administer the RCRA UST program in lieu of the federal program when EPA deems the state program to be substantially equivalent to the federal program.
6. On March 17, 1995, EPA granted Massachusetts final authorization to administer its UST program in lieu of the federal government's program (60 *Fed. Reg.* 14371). The state program, authorized under the authority set out at Chapter 22 of the Massachusetts General Laws (M.G.L.) §14, includes regulations applicable to owners and operators of USTs as set forth at 527 Code of Massachusetts Regulations (“C.M.R.”) 9.00. Thus, from March 17, 1995, the Massachusetts requirements for USTs have been enforceable by EPA.
7. Pursuant to Section 9006(a) of RCRA, 42 U.S.C. § 6991e(a), EPA is authorized to issue administrative orders to compel compliance with any requirement of Subchapter IX (Regulation of Underground Storage Tanks) of the Solid Waste Disposal Act, as amended by Subtitle I to RCRA, Sections 9001 *et seq.* of RCRA, 42 U.S.C. §§ 6991 *et seq.*, including the federally-approved UST requirements promulgated by Massachusetts at 527 C.M.R 9.00.
8. Pursuant to Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), as adjusted by the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19 (promulgated pursuant to Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701), EPA may seek penalties for violations occurring after January 12, 2009 of up to \$16,000 for each tank for each day of violation of any requirement or standard of a federally-approved State UST program.

III. FINDINGS OF FACT

9. Hilton Oil Company, Inc. is a corporation organized under the laws of the Commonwealth of Massachusetts with a business address of 101 South Union Street, Lawrence, Massachusetts, 01843.
10. The property that is the subject of this action is located in the City of Lawrence, Essex County, Massachusetts and includes the underground storage tanks and piping, land and buildings located at 101 South Union Street, Lawrence, Massachusetts (hereinafter referred to as the "Facility").
11. The Facility is owned and operated by the Respondent and registered as Hilton Oil Company, Inc. with the Massachusetts Department of Environmental Protection ("MassDEP") Underground Storage Tank Program, Massachusetts Department of Fire Services Facility No. 40097.
12. At all times relevant to the violations alleged herein, Respondent has owned and operated the following USTs at the Facility (hereinafter referred to as the "Regulated USTs"):
 - a. three 6,000 gallon single walled bare steel gasoline underground storage tanks;
 - b. one 4,000 gallon single walled bare steel diesel underground storage tank;
 - c. one 1,000 gallon single walled bare steel kerosene underground storage tank; and
 - d. one 20,000 gallon double walled fiberglass compartmentalized diesel/fuel oil underground storage tank.
13. Respondent's five regulated single walled bare steel USTs are protected from corrosion by an impressed current cathodic protection system.

IV. GENERAL ALLEGATIONS

14. Respondent is a "person," as that term is defined at Sections 9001(5) and 1004(15) of RCRA, 42 U.S.C. §§ 6991(5) and 6903(15), and 40 C.F.R. § 280.12.

15. At all times relevant to the violations alleged herein, Respondent has been the “owner” and “operator,” as those terms are defined at 40 C.F.R. § 280.12, of one or more “USTs,” as that term is defined at Section 9001(1) of RCRA, 42 U.S.C. § 6991(1), and 40 C.F.R. § 280.12.
16. As an owner and operator of an UST, Respondent was, and is, subject to RCRA and the federally-authorized Massachusetts UST regulations set forth at 527 C.M.R. 9.00.
17. On June 27, 2013, EPA representatives inspected the Respondent’s Facility and found several violations of the Massachusetts UST regulations at 527 C.M.R. 9.00. The EPA representatives issued a field citation to Respondent listing the violations and giving the Respondent 30 days to bring the Facility into compliance.
18. Over the course of the following several months, EPA provided technical assistance to the Respondent in an effort to bring the Facility into compliance. Because the Respondent failed to achieve complete compliance in accordance with the terms of the field citation, on September 2, 2014, EPA sent a certified letter to the Respondent withdrawing the field citation pending possible issuance of an administrative enforcement action.

V. CLAIMS FOR RELIEF

19. Based on the June 27, 2013 inspection findings and subsequent submittals of documentation by the Respondent, EPA finds that the Respondent violated the following provisions of Subtitle I of RCRA and the federally-approved Massachusetts UST requirements.

COUNT 1—Failure to Maintain Tank Leak Detection Records

20. The allegations of paragraphs 1 through 19 are re-alleged as though fully set forth herein.

21. Under the federally-approved Massachusetts UST regulation at 527 C.M.R. 9.05(D)(2), each of Respondent's Regulated USTs must satisfy one of three allowed options for leak detection. The Respondent has chosen the option under 527 C.M.R. 9.05(D)(2)(b) that provides for installation and maintenance of an approved in-tank monitoring system that has been installed and maintained by a qualified person as the method of leak detection for Respondent's Regulated USTs.
22. The federally-approved Massachusetts UST regulation at 527 C.M.R. 9.05(D)(2)(b)(2), subsequently amended and renumbered by Massachusetts Department of Fire Services ("MA DFS") as 527 C.M.R. 9.05(D)(2)(a)(2), requires that, at the end of each calendar month, the operator shall use the in-tank monitor over a continuous period of six hours to determine any loss of product.
23. The federally-approved UST regulation at 527 C.M.R. 9.05(D)(4), subsequently amended and renumbered by the MA DFS as 527 C.M.R. 9.05(D)(7), requires that the owner and/or operator of every storage facility shall keep all records of, among other things, leak detection monitoring, for the remaining operating life of the facility.
24. Neither at the time of the June 27, 2013 inspection or anytime thereafter, has Respondent provided all necessary records showing that the USTs at the Facility passed a monthly six hour in-tank monitoring system test, in violation of 527 C.M.R. § 9.05(D)(4), subsequently amended and renumbered by the MA DFS as 527 C.M.R. § 9.05(D)(7).

COUNT 2 — Failure to Keep Records of Cathodic Protection Monitoring

25. The allegations of paragraphs 1 through 24 are re-alleged as though fully set forth herein.
26. The federally-approved Massachusetts UST regulation at 527 C.M.R. 9.05(D)(4), subsequently amended and renumbered by the MA DFS as 527 C.M.R. 9.05(D)(7), requires that the owner and/or operator of every storage facility keep all records of,

among other things, cathodic protection monitoring, for the remaining operating life of the facility.

27. Neither at the time of the June 27, 2013 inspection nor anytime thereafter, has Respondent provided records of the impressed current cathodic protection system at the Facility, in violation of 527 C.M.R. 9.05(D)(4), subsequently amended and renumbered by the MA DFS as 527 C.M.R. 9.05(D)(7).

IV. CONSENT AGREEMENT

28. The parties agree that settlement of the above matter is in the public interest, and that entry of this CAFO without litigation is the most appropriate means of resolving this matter. Therefore, before taking any testimony, and without adjudication of any issue of fact or law, the parties hereby agree as follows.
29. The provisions of this CAFO shall apply to and be binding on the Respondent, and the successors and assigns of Respondent, until Respondent has completed all obligations required by this CAFO.
30. The parties agree to settle EPA's cause of action described herein by the issuance of this CAFO as provided under 40 C.F.R. § 22.13(b).
31. Respondent stipulates that EPA has jurisdiction over the subject matter alleged herein and that EPA has stated a claim upon which relief can be granted against Respondent.
32. Respondent admits the jurisdictional allegations herein and neither admits nor denies specific factual allegations contained herein.
33. Respondent waives any defenses it might have as to jurisdiction and venue, waives its right to request a judicial or administrative hearing, and consents to the terms of this CAFO. Respondent further waives any right to contest the allegations herein and its right to appeal the proposed Final Order accompanying this Consent Agreement.

34. In settlement hereof, Respondent agrees to comply with the Compliance Order and pay the penalty specified below.

Terms of Settlement

Compliance Order

35. Within 30 days of the effective date of this CAFO (which is the date it is filed with the Regional Hearing Clerk), the Respondent shall provide to EPA at the address below:

- a. a diagram of the Regulated USTs and associated piping prepared by a person familiar with the Facility's UST system that shows the location of all buildings, tanks, piping and appurtenances on the site, and that clearly identifies the type and construction of each tank, pipe, and appurtenance (e.g., pressurized, suction, steel, fiberglass, double walled, etc.);
- b. written records demonstrating that the Regulated USTs requiring leak detection monitoring have passed the six hour in-tank monitoring system test as required by 527 C.M.R. 9.05(D)(2)(b)(2), subsequently amended and renumbered by the MassDEP as 527 C.M.R. 9.05(D)(2)(a)(2), and, as of January 2, 2014, subsequently amended and renumbered as 310 C.M.R. 80.36 (Requirements for Recordkeeping). The Respondent shall submit three consecutive months of passing records for leak detection monitoring of all Regulated USTs through July 31, 2015;
- c. documentation showing whether the double walled 20,000 gallon tank at the Facility is coated or clad in a non-conductive material, thereby precluding the need for cathodic protection monitoring;
- d. if cathodic protection monitoring is required for the double walled 20,000 gallon tank, records of the cathodic protection monitoring required to be performed

every sixty days and maintained in a log at the Facility, as required by 527 C.M.R. 9.05(D)(4), subsequently amended and renumbered by the MassDEP as 527 C.M.R. 9.05(D)(7)), and, as of January 2, 2014, subsequently amended and renumbered as 310 C.M.R. 80.29 (Requirements for Corrosion Protection). Such records of the cathodic protection monitoring shall be submitted through July 31, 2015; and

- e. certification that the Facility is in full compliance with all other requirements of the federally-approved UST regulations at 527 C.M.R. 9.00, as subsequently amended and/or renumbered by the MassDEP, with respect to the Regulated USTs identified above, except that, for purposes of this CAFO only, the Facility need only meet 0.2 gallon per hour leak rate to pass the six hour in-tank monitoring system test noted in subsection (b) above..

36. Respondent shall submit the above required information and certification to:

Director, Office of Site Remediation and Restoration
U.S. Environmental Protection Agency
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912
ATTN: UST Program (OSRR07-01)

37. If Respondent fails to comply with the requirements of the above Compliance Order within the time specified, Section 9006(a)(3) of RCRA, 42 U.S.C. § 6991e(a)(3), as adjusted by the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19 (promulgated under section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701), provides for further enforcement action in which EPA may seek the imposition of penalties of up to \$37,500 for each day of continued noncompliance.

Payment of Penalty

38. Based on the foregoing, the Respondent agrees to pay an administrative civil penalty of \$27,000 for the violations specifically alleged herein within 30 days of the effective date of this CAFO (which is the date the CAFO is filed with the Regional Hearing Clerk).
39. Respondent shall make the penalty payment by submitting, to the address below, a certified check payable to “Treasurer, United States of America,” and referencing the title and docket number of the action (which is “In the Matter of Hilton Oil Co., Inc.; EPA Docket No. RCRA-01-2014-0068”):

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

Copies of the check must also be mailed to:

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I (ORA 18-1)
5 Post Office Square, Suite 100
Boston, MA 02114-2023

and

Tonia Bandrowicz, Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region I (OES 04-03)
5 Post Office Square, Suite 100
Boston, MA 02114-2023

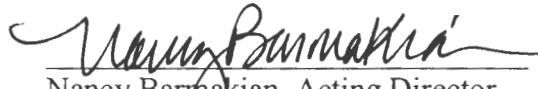
Additional Provisions

40. Respondent shall pay interest on the late amount pursuant to 31 U.S.C. § 3717, plus any late charges to cover the cost of processing and handling the delinquent claim. The interest on the late amount shall be calculated at the rate of the U.S. Treasury tax and loan rate, in accordance with 31 C.F.R. § 901.9(b)(2).

41. All payments made pursuant to this Section are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and Respondent shall not use these payments in any way as, or in furtherance of, a tax deduction under federal law.
42. Neither assessment nor payment of an administrative civil penalty pursuant to Section 9006(d) of RCRA, 42 U.S.C. § 6991e(d), shall affect Respondent's continuing obligation to comply with RCRA, and with other applicable federal, state or local laws, regulations, permits, or requirements, concerning the violations alleged herein. Nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. 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.
43. Full payment of the settlement penalty above shall only resolve Respondent's liability for federal civil penalties for the violations alleged herein.
44. Pursuant to Section 22.5(c)(4) of the *Consolidated Rules*, the following individual is authorized to receive service on behalf of EPA:
- Tonia Bandrowicz
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1 (OES 04-03)
5 Post Office Square, Suite 100,
Boston, MA 02114-2023
45. Each party shall pay its own costs and counsel fees in connection with this action, except as may be described herein.
46. The undersigned representative of 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 Respondent to it.

THE UNDERSIGNED PARTY enters into this Consent Agreement and Final Order in the Matter of Hilton Oil Co., Inc., EPA Docket No. RCRA-01-2014-0068, on behalf of EPA:

03/19/15
Date


Nancy Barnakian, Acting Director
Office of Site Remediation and Restoration
U.S. EPA

THE UNDERSIGNED PARTY enters into this Consent Agreement and Final Order in the Matter of Hilton Oil Co., Inc., EPA Docket No. RCRA-01-2014-0068, on behalf of Hilton Oil Company, Inc.:

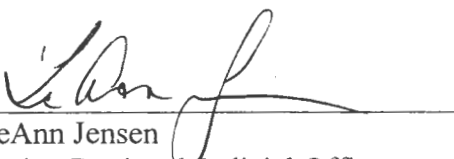
3/23/15
Date


President, Hilton Oil Co., Inc.

FINAL ORDER

Pursuant to Sections 9006(a) and (d) of RCRA, 42 U.S.C. §§ 6991e(a) and (d), the above Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the above Consent Agreement which shall become effective upon filing with the Regional Hearing Clerk.

3/25/15
Date



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

CERTIFICATE OF SERVICE

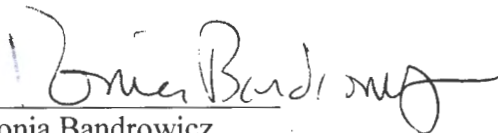
I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons in the manner and on the date specified below.

**Original and one copy,
hand delivered:**

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency
5 Post Office Square, Suite 100
Mail Code: ORA18-1
Boston Massachusetts 02109-3912

**Copy, Certified Mail
return receipt requested:**

David Bernardin, Esq.
Law Office of Bernardin & Bernardin
21 Central Street
Andover, MA 01810



Tonia Bandrowicz
Senior Enforcement Counsel
U.S. Environmental Protection Agency
5 Post Office Square, Suite 100,
Mail Code: OES 04-03
Boston, MA 02114-2023

3/26/15
Date