

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Rivera for

Kathleen Woodward
Name of Case Attorney

8/18/10
Date

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

Case Docket Number CWA-01-2009-0073

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:

Town of Eastham, MA
Town Hall
2500 State Highway
Eastham, MA 02642

Total Dollar Amount of Receivable \$ 2,250 Due Date: _____

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, MA 02109-3912

BY HAND

August 18, 2010

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100
Mail Code ORA17-1
Boston, MA 02109-3912

Re: In the Matter of Town of Eastham, Massachusetts
Administrative Penalty Action Settlement: Docket No. CWA-01-2009-0073

Dear Ms. Santiago:

For the above-referenced matter, please file the enclosed Consent Agreement and Final Order. I have included the original and one copy of these documents.

Thank you for your attention to this matter. Should you have any questions, please contact me at (617) 918-1780.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kathleen E. Woodward".

Kathleen E. Woodward
Senior Enforcement Counsel

Enclosure

cc: Sheila Vanderhoef, Town Administrator
Gregg Corbo, Esq.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

2009 AUG 23
CLERK

_____))
IN THE MATTER OF))
))
Town of Eastham))
Town Hall))
2500 State Highway))
Eastham, MA 02642))
Respondent.))
_____)

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. CWA 01-2009-0073

This Consent Agreement and Final Order ("CAFO") is issued under the authority granted to the U.S. Environmental Protection Agency ("EPA") by Section 309(g) of the Clean Water Act (the "Act"), 33 U.S.C. § 1319(g), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," at 40 C.F.R. Part 22 ("Part 22 Rules").

I. PRELIMINARY STATEMENT

1. EPA initiated this proceeding against the Respondent pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), by filing an administrative Complaint against Respondent, Docket No. CWA-01-2009-0076 (the "Complaint"), on August 12, 2009.
2. The complete factual and jurisdictional basis for proposing the assessment of a civil penalty is set forth in the Complaint and is incorporated herein by reference.

CONSENT AGREEMENT AND FINAL ORDER
U.S. EPA Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Docket No. CWA-01-2009-0073

3. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), the Commonwealth of Massachusetts has been given an opportunity to consult with EPA regarding the assessment of the administrative penalty for CWA violations against Respondent.
4. Section 309(g)(4)(A) of the CWA, 33 U.S.C. 1319(g)(4)(A), provides that, prior to issuing an order assessing a penalty under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), 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 on August 24, 2009.

II. CONSENT AGREEMENT

5. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint.
6. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the facts and violations alleged in the Complaint, consents to the terms of this CAFO.

III. WAIVER OF RIGHTS

7. Respondent hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in the Complaint, and consents to the issuance of the Final Order included with this Consent Agreement without further adjudication.

IV. TERMS OF SETTLEMENT

8. Based upon the statutory penalty factors at Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), and Respondent's agreement to perform a Supplemental Environmental Project ("SEP"), and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of two thousand two hundred and fifty dollars (\$2,250.00) plus interest if due pursuant to Paragraph 23 of this CAFO.

V. PAYMENT TERMS

9. Respondent shall pay the civil penalty set forth in Paragraph 8 of this CAFO no later than 10 calendar days after the date this CAFO is final.
10. Respondent shall make payment by depositing in the United States mail a cashier's or certified check, payable to the order of "Treasurer, United States of America" and referencing the title and docket number of the action ("In the Matter of the Town of Eastham, Massachusetts, CWA-01-2009-0073") to:

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

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

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100
Mail Code ORA17-1
Boston, MA 02109-3912

and

Kathleen E. Woodward
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100
Mail Code OES4-2
Boston, MA 02109-3912

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

12. Respondent shall undertake and complete the following supplemental environmental project ("SEP"), which the parties agree is intended to secure significant environmental improvements. In accordance with the Schedule set forth in Paragraph 13 hereof, Respondent shall eliminate the outfall that discharges stormwater from Herring Run Road into Herring Brook. Respondent will accomplish this by altering the grade of the Herring Run Road in proximity to the Herring Run outfall and replacing the outfall with deep sump catch basins. The SEP will benefit the environment by eliminating pollutant transport from Herring Run Road to Herring Brook through infiltration of stormwater.

13. Respondent shall undertake and complete the SEP as follows:

A. Within 90 days of the date that the CAFO is final: complete design work;

B. Within 120 days of completion of design, complete permitting and advertising for bids;

C. Within 60 days of advertising for bids award contract;

D. Project shall be complete by November 15, 2011.

The SEP is more specifically described in the scope of work (hereinafter, the "Scope of Work"), attached hereto as Exhibit A and incorporated herein by reference.

14. The total cost to the Respondent of the SEP shall be not less than twenty-five thousand dollars (\$25,000) in accordance with the specifications set forth in the Scope of Work. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

15. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation, nor is Respondent required to perform or develop the SEP under any grant or agreement with any governmental or private entity, as injunctive relief in this or any other case, or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

16. SEP Reports:

a. **SEP Completion Report:** Respondent shall submit a SEP Completion Report to EPA for the SEP within thirty (30) days of completion of the SEP. The SEP Completion Report shall contain the following information:

- (i) A detailed description of the SEP as implemented;
- (ii) A description of any operating problems encountered and the solutions thereto;
- (iii) Itemized costs, documented by copies of purchase orders and receipts, canceled checks, or wire transfer records;
- (iv) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Order; and
- (v) A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

b. **Quarterly Reports:** Until Respondent submits its Completion Reports for the SEP, Respondent shall submit quarterly written reports (“Quarterly Reports”) outlining work performed on the SEP to date and funds spent to date, commencing with the first full calendar quarter following the effective date of this Consent Agreement and Final Order. Such reports shall be provided to EPA postmarked no later than the last day of the calendar month following the end of each calendar quarter. Calendar quarters end on the following dates: March 31, June 30, September 30 and December 31. Quarterly Reports are to be postmarked

not later than April 30, July 31, October 31, and January 31. The first Quarterly Report shall be prepared for the calendar quarter during which the CAFO becomes final. Each Quarterly Report shall contain a narrative description of the SEP activities undertaken to date, an itemization (with copies of supporting documentation) of costs incurred on the SEP, and a report of any difficulties or delays in the implementation of the SEP. The absence of EPA comments on the Quarterly Reports shall not constitute approval of the progress being made on the SEP or waiver of EPA's rights to determine that the SEP was not completed satisfactorily and to take any action specified in Paragraph 20 of this Consent Agreement and Final Order.

c. Respondent agrees that an unexcused failure to submit the SEP Completion Report or any Quarterly Report required by subsections a. and b. above shall be deemed a violation of this Consent Agreement and Order and that Respondent shall become liable for stipulated penalties pursuant to Paragraph 20 below.

d. Respondent shall submit all Quarterly Reports and the Completion Report and any other notices required by this Consent Agreement and Order by first class mail to:

Andrew Spejewski
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100
Mail Code OES4-1
Boston, MA 02109-3912

e. In itemizing its costs in the SEP Completion Reports, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP completion report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, “acceptable documentation” includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

17. EPA right to inspect: Respondent agrees that EPA may inspect the facility at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.

18. Document retention and certification: Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this Consent Agreement and shall provide the documentation of any such underlying research and data to EPA not more than seven days after a request for such information. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this Consent Agreement, Respondent shall, by its Town Administrator or Board of Selectmen, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

CONSENT AGREEMENT AND FINAL ORDER
U.S. EPA Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Docket No. CWA-01-2009-0073

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

19. EPA acceptance of SEP Completion Report and Determination of SEP

Compliance

- a. After receipt of the SEP Completion Report described in Paragraph 16(a) above, EPA will notify the Respondent in writing: (i) that EPA concludes that the SEP has been completed satisfactorily; (ii) that EPA has determined that the project has not been completed satisfactorily and is specifying a reasonable schedule for correction of the SEP or the SEP Completion Report; or (iii) that EPA has determined that the SEP does not comply with the terms of this CAFO and is seeking stipulated penalties in accordance with Paragraph 20 herein.
- b. If EPA notifies Respondent pursuant to clause (ii) above that the SEP itself or the SEP Completion Report does not comply with the requirements of this CAFO, Respondent shall make such corrections to the SEP and/or modify the SEP Completion Report in accordance with the schedule specified by EPA.
- c. If EPA notifies Respondent pursuant to clause (iii) above that the SEP itself does not comply with the requirements of this CAFO, Respondent shall pay stipulated penalties to EPA in accordance with Paragraph 20 herein.

20. Stipulated Penalties:

a. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in Paragraphs 12 through 16 above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 14 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

(i) Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to this Consent Agreement and Order, Respondent shall pay a stipulated penalty to the United States in the amount of \$25,000, plus interest at the rate identified in Paragraph 23.

(ii) If the SEP is not completed in accordance with Paragraph 12 and but the Complainant determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.

(iii) If the SEP is completed in accordance with paragraph 12, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of the difference between \$25,000 and the amount of eligible costs that Respondent spent on the SEP, plus interest pursuant to Paragraph 23.

(iv) If the SEP is completed in accordance with Paragraph 12, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.

(v) For failure to submit the SEP Completion Report required by Paragraph 16(a) above or for failure to submit an adequate Completion Report, Respondent shall pay a stipulated penalty in the amount of \$100 per day for each day from the day after the report is due until the report is submitted, or in the case of an inadequate report, until the report is submitted with deficiencies addressed.

(vi) For failure to submit any other report required by Paragraph 16(b) above, Respondent shall pay a stipulated penalty in the amount of \$100 per day for each day from the day after the report is due until the report is submitted, or in the case of an inadequate report, until the report is submitted with deficiencies addressed.

b. The determinations 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 sole discretion of EPA.

c. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of a written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraph 10 above. Interest and late charges shall be paid as stated in Paragraph 23 herein.

d. 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 agreement or of the statutes

and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

21. **Public statements must acknowledge enforcement action:** Any public statement, oral or written, in print, film, or other media, made by Respondent making reference 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 alleged violations of the Clean Water Act."

22. **No relief from compliance; no endorsement by EPA:** This Consent Agreement and Order shall not relieve Respondent of its obligation 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, nor shall it be construed to constitute EPA approval of the design used or materials installed by Respondent in connection with the SEP undertaken pursuant to this Agreement.

VI. General Provisions

23. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), a failure by Respondent to pay the penalty or stipulated penalties assessed by this CAFO in full by the payment due date shall subject Respondent to a civil action to collect the assessed penalty, plus interest at current prevailing rates from the date the penalty was due pursuant to Paragraph 9 of this CAFO. 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. 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 20 percent of the aggregate amount of such person's penalties and nonpayment penalties which 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.

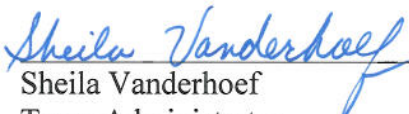
24. The penalty specified in Paragraphs 8 and 20 above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes. For Federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.
25. The provisions of this CAFO shall be binding upon Respondent and their successors and assigns.
26. Except as described in Paragraph 23 above, each party shall bear its own costs and attorneys fees in this proceeding.
27. Issuance of this CAFO constitutes a full and complete settlement by EPA of all claims for judicial and administrative civil penalties pursuant to Sections 309(d) and (g) of the CWA, 33 U.S.C. §§ 1319(d) or (g), for all past violations of the CWA alleged in the Complaint referenced in Paragraph 1 and for failure to timely submit annual reports required by the National Pollutant Discharge Elimination System

General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems, Part II.F, from May 1, 2004 through April 30, 2009.

28. 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, pursuant to Sections 309(a), (b), and (c) of the Act, 33 U.S.C. §§ 1319(a), (b), and (c), or Sector 504 of the Act, 33 U.S.C. § 1364.
29. 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.
30. 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.

STIPULATED AND AGREED:


For RESPONDENT TOWN OF EASTHAM, MASSACHUSETTS



Sheila Vanderhoef
Town Administrator
Town of Eastham, Massachusetts

Date: 29 July 2010

For U.S. ENVIRONMENTAL PROTECTION AGENCY



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

Date: 08/13/10

FINAL ORDER

31. The forgoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is 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 Judicial Officer.

U.S. ENVIRONMENTAL PROTECTION AGENCY



Jill Metcalf
Acting Regional Judicial Officer
U.S. EPA, Region 1

Date: August 16, 2010

Town of Eastham

Department of Public Works
555 Old Orchard Road
Eastham, MA. 02642



508 240-5973
Fax 508 240-6687
dpw@eastham-ma.gov

Supplemental Environmental Project (SEP) Outfall Elimination

SCOPE OF WORK

A. Background Information

The herring run connecting Bridge Pond and Great Pond to Cape Cod Bay is Eastham's most productive herring run. The run crosses under Herring Brook Road and Cole road as it flows to Cape Cod Bay. Eastham is currently designing improvements to the run including new culverts and weirs as part of a grant funded project. The grant, however, is not funding improvements to the storm sewer system on Herring Brook Road. The existing storm sewer system has a direct outfall into the herring run.

B. Environmental issues

The section of Herring Brook Road, which drains into the herring run, is located in a rural area. The primary storm water impact to the run is through the deposition of sand into the bed of the run. This sand is from winter road maintenance. The sand in the channel hinders the passage of herring.

It should be noted that construction cannot take place during the spring or summer. Herring use the run in the spring and tourist season traffic prevents closing the road during the summer. Additionally, the road cannot be reconstructed before the new culvert is installed under the road as part of the herring run restoration project.

C. Project

The project consists of the reconstruction of a 600-foot section of Herring Brook Road. This will allow the grade of the road to be changed so that the low point of the road is no longer at the herring run. Berms would be installed to eliminate the possibility of storm water being discharged directly into the run. Deep sump catch basins with hoods will be installed to collect sand and other contaminants. The overflow will be leached into the ground in an area away from the run. Raising the grade of the road near the herring run provides additional separation from ground water in the leaching area as well as preventing the discharge of storm water into the run.

D. Project Costs

The estimated project costs are as follows:

Reconstruct 600 feet of roadway with grade change	\$ 17,250.00
Install two deep sump catch basins	\$ 6,500.00
Install drainage pipe	\$ 500.00
Retrofit three catch basins with hoods	\$ 750.00
Total	\$ 25,000.00

The costs of the replacement of the culvert and other improvements to the herring run are not included in the above cost estimates.

E. Environmental Benefits

Although water quality testing in the Run and downstream at the Cole Road Bathing Beach shows contaminant levels within EPA water quality standards, Herring Brook Road is currently a conduit to deposit any accumulated pollutants directly into the herring run during storm events. Typical pollutants found on rural roads such as Herring Brook Road include animal excrement, petroleum hydrocarbons, nitrogen, and phosphorus. Peak flows of storm water have also scoured the bank and deposited sand and stone into the bed of the herring run. This has changed the stream gradient and made it more difficult for herring to reach the pond. Elimination of the outfall to the run will prevent, rather than merely reduce, direct discharges of storm water to the herring run which is about 2000 feet upstream of the Cole Road Bathing Beach. This will provide both water quality improvements and improved anadromous fish habitat.

F. Current Need & Future Use

Implementation of this project is an environmental improvement in exceedance of what is required under the Small MS4 Permit. The Herring Brook Road outfall and proximate drainage area could be reconstructed at significantly less expense without eliminating the storm water outfall. In that case, the town would continue to sweep the road and clean the catch basins. Implementation of the project would eliminate, rather than merely reducing, direct discharge to the stream.

G. Permitting

The following permits are expected:

Eastham DPW – Road opening permit

Eastham Conservation Commission – Notice of intent/Order of Conditions

Note: The reconstruction of the Herring run will be permitted as a separate project.

In the Matter of: Town of Eastham, Massachusetts
Docket No. CWA 01-2009-0073

CERTIFICATE OF SERVICE

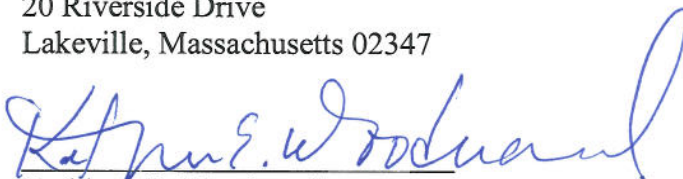
I certify that the foregoing Consent Agreement and Final Order was sent to the following persons, in the manner specified on the date below:

Copy hand-delivered: Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Square, Suite 100
Mail Code ORA17-1
Boston, Massachusetts 02109-3912

Copy by certified mail, return
receipt requested: Sheila Vanderhoef
Town Administrator
Town of Eastham
2500 State Highway
Eastham, Massachusetts 02642

Copy by first-class mail to: David Johnston, Acting Regional Director
Massachusetts Department of Environmental
Protection
Southeast Regional Office
20 Riverside Drive
Lakeville, Massachusetts 02347

Dated: August 18, 2010



Kathleen E. Woodward
Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. EPA, Region I
5 Post Office Square, Suite 100
Mail Code OES4-2
Boston, MA 02109-3912
(617) 918-1780