

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Jeffrey Kopf 10/4/11
Name of Case Attorney Date

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

Case Docket Number CWA-01-2011-0020

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:

Charles River Pollution Control
District
66 Village Street
Medway, MA 02053

Total Dollar Amount of Receivable \$ 16,500 Due Date: 10/30/11

SEP due? Yes No Date Due 10/1/12

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
Mail Code: OES04-4
BOSTON, MASSACHUSETTS 02109-3912

RECEIVED

2011 SEP 30 A 11: 22

EPA ORC
OFFICE OF
REGIONAL HEARING CLERK
WS

September 30, 2011

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

BY HAND


Re: In the Matter of: Charles River Pollution Control District,
Docket No. CWA-01-2011-0020
Consent Agreement and Final Order

Dear Ms. Santiago,

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

Thank you for your attention to this matter.

Sincerely,


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

Enclosure

cc: Michael A. Leon, Esq., Nutter McClennen & Fish LLP



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

5 Post Office Square, Suite 100

Mail Code: OES04-4

BOSTON, MASSACHUSETTS 02109-3912

September 30, 2011

Jill Metcalf
Acting Regional Judicial Officer
U.S. EPA, Region I
5 Post Office Square, Suite 100
Mail Code: ORA18-1
Boston, MA 02109-3912

BY HAND

Re: In the Matter of: Charles River Pollution Control District,
Docket No. CWA-01-2011-0020
Consent Agreement and Final Order

Dear Ms. Metcalf,

In accordance with 40 C.F.R. § 22.18(b), enclosed please find a Consent Agreement and Final Order (CAFO) that has been signed by the parties and is now being submitted to you for approval.

The proposed penalty of \$16,500 in the matter is consistent with EPA's Interim Clean Water Act Settlement Penalty Policy. The Supplemental Environmental Project being conducted as part of this Consent Agreement is consistent with the May 1, 1998 EPA Supplemental Environmental Projects Policy.

Public notice of this settlement was provided as required by 40 C.F.R. § 22.45(b). The close of the public comment period was April 12, 2011 and, in accordance with § 22.45(c)(3), the Final Order is being submitted to you at least 10 days thereafter. Once the Final Order has been signed, EPA will file the fully executed CAFO with the Regional Hearing Clerk thereby resolving this matter. If you have any questions related to this matter please call me at 617-918-1796.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jeffrey Kopf".

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

Enclosure

cc: Michael A. Leon, Esq., Nutter McClennen & Fish LLP (via email w/o enclosure)
Wanda Santiago, Regional Hearing Clerk (via hand delivery w/o enclosure)

RECEIVED

2011 SEP 30 A 11: 23

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

EPA ORC
OFFICE OF
REGIONAL HEARING CLERK WS

In the Matter of:)

) Docket No. CWA 01-2011-0020

)
) CHARLES RIVER WATER)
) POLLUTION CONTROL DISTRICT)

) CONSENT AGREEMENT)
) AND FINAL ORDER)

)
) 66 Village Street)
) Medway, MA 02053)

) Respondent.)
_____)

This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g), in accordance with 40 C.F.R. § 22.18(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 (“Part 22 Rules”).

CONSENT AGREEMENT AND FINAL ORDER
In re: Charles River Water Pollution Control District
Docket No. CWA-01-2011-0020

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

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, the Charles River Water Pollution Control District Docket No. CWA-01-2011-0020, on March 9, 2011.
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.
3. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and in accordance with 40 C.F.R. § 22.38(b), 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.

II. CONSENT AGREEMENT

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

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.

Penalty

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 SIXTEEN-THOUSAND FIVE-HUNDRED dollars (\$16,500) plus interest if due pursuant to Paragraph 24 of this CAFO.

Payment Terms

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

9. Respondent shall pay the civil penalty set forth in paragraph 8 of this CAFO no later than 10 calendar days after the final date of this CAFO.

10. Respondent shall make payment by depositing in the United States mail a cashier's or certified check, or a check issued in the ordinary course of business conducted by Respondent, payable to the order of "Treasurer, United States of America" and referencing the title and docket number of the action ("In the Matter of Charles River Water Pollution Control District CWA-01-2011-0020") to:

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

The date said check is deposited in the mail shall be considered the date that the payment is made.

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
Mailcode ORA18-1
Boston, MA 02109-3912

and

Jeffrey Kopf
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100
Mailcode OES04-4
Boston, MA 02109-3912

Supplemental Environmental Project (“SEP”)

12. Respondent shall complete the following SEP, as described in Attachment 1, which the parties agree is intended to secure significant environmental benefits. The SEP consists of a low impact development/green infrastructure project at the intersection of Miller and Green Streets, in Franklin, Massachusetts, described in Attachment 1.

13. **SEP Completion Report.** Respondent shall submit an SEP Completion Report within 60 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 list of itemized costs for implementing the SEP; (iii) a certification by Respondent that the SEP has been fully implemented pursuant to the provisions of this CAFO; and (iv) a description of the environmental and public health benefits resulting from implementation of the SEP.

14. **Quarterly Reports.** Respondent shall submit quarterly written reports outlining work completed to date and funds spent to date. The quarterly reports will include copies of invoices documenting funds spent towards completion of the SEP. The reports shall be submitted to EPA by the 30th day of the month following each quarter (January, April, July, October).

15. Respondent agrees that failure to submit the reports required by paragraphs 13 and 14 shall be deemed a violation of this CAFO, and Respondent shall become liable for stipulated penalties pursuant to paragraph 18 below.

16. Respondent shall submit all notices, submissions, and reports required by this CAFO to Douglas Koopman by First Class mail or any other commercial delivery service at the following address:

Douglas Koopman
US EPA Region 1
5 Post Office Square, Suite 100
Mailcode OES04-3
Boston, MA 02109-3912

17. After receipt of the SEP Completion Report described in paragraph 14 above, EPA will notify 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 18 herein. 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. 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 18 herein.

18. **Stipulated Penalties.** (i) In the event that Respondent fails to complete the SEP in accordance with the terms of this CAFO, Respondent shall be liable for a stipulated penalty of \$49,500, unless Respondent demonstrates, and EPA agrees, that Respondent made good faith and timely efforts to complete the project and certifies, with supporting documentation, that at least 90 percent of the amount of money that was required to be spent was expended on the SEP, in which case Respondent shall not be liable for any stipulated penalty. In the event that Respondent fails to submit the SEP Completion Report required by paragraph 13, or fails to submit the Quarterly Reports required by paragraph 14, Respondent shall pay a stipulated penalty in the amount of \$100 for each day after the SEP Completion Report or Quarterly Report was originally due until the date that the report is submitted. (ii) The determination of whether the SEP has been satisfactorily completed and whether Respondent has made good faith, timely efforts to implement the SEP shall be in the sole discretion of EPA. (iii) 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. (iv) Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of paragraphs 10 and 11 above. Interest and late charges shall be paid as stated in paragraph 23.

19. Respondent certifies that, as of the date of this Consent Agreement, Respondent is not required to perform the SEP by any federal, state or local law or regulation, nor is Respondent required to perform 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 it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

20. 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. 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 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 purposes 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.

21. Respondent agrees neither to capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP for purposes of Federal income taxes.

22. Respondent agrees that 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 violations of the Clean Water Act."

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 any 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 paragraph 8 above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes.

25. The provisions of this CAFO shall be binding upon Respondent and its successors or 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.

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 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, CHARLES RIVER WATER POLLUTION CONTROL DISTRICT

Cheri Cousens
Cheri Cousens, PE, Executive Director
Charles River Water Pollution Control District

Sept 29, 2011
Date

For U.S. ENVIRONMENTAL PROTECTION AGENCY

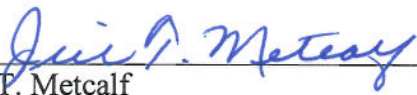
Susan Studlien
Susan Studlien, Director
Office of Environmental Stewardship
U.S. EPA, Region 1

09/20/11
Date

FINAL ORDER

32. The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, which will become final thirty (30) days from the date it is signed by the Regional Judicial Officer .

U.S. ENVIRONMENTAL PROTECTION AGENCY



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

Date: September 30, 2011

Attachment 1

Supplemental Environmental Project (SEP): Low Impact Development/Green Infrastructure Project in Franklin, Massachusetts

The Charles River Water Pollution Control District ("District") hereby agrees to undertake the following project in connection with the settlement of the enforcement action described in this Consent Agreement and Final Order (Docket No. CWA-01-2011-0020):

A. Low Impact Development (LID)/Green Infrastructure (GI) Project.

The District will be responsible for the removal of approximately 2,000 square feet of impervious surface from the intersection of Miller and Green Streets in Franklin, Massachusetts (as shown on Map 1). In addition, the District shall be responsible for the construction of stormwater improvements, including the installation of deep sump catch basins and a Hydrodynamic Separator to remove solids from stormwater, as well as the construction of a rain garden to remove solids and phosphorus, and to provide an area for infiltration. The District shall also be responsible for the installation of public viewing material listing the stormwater improvements and publication of an article in the local newspaper describing the benefits of these LID/GI projects, and additional actions the public can undertake to reduce pollutants in stormwater runoff such as reducing use of pesticides and fertilizers in yards, as well as picking up pet waste.

B. Environmental Issues.

The proposed stormwater improvements will handle the stormwater runoff from the 3.7 acres of impervious coverage contained in this watershed and will infiltrate the first 0.6 inches of rainfall. The remaining stormwater will discharge to an existing storm drain system.

The Charles River suffers from excess phosphorus levels from sources including stormwater runoff. Excess phosphorus to the Charles River fertilizes the aquatic system. As phosphorus is typically the nutrient most affecting plant growth in fresh water systems, the addition of phosphorus allows more plants to grow. Algae, photosynthetic cyanobacteria and aquatic weeds can now grow in abundance, altering the natural balance of the aquatic ecosystem.

C. Costs.

The District will provide funding of \$60,000 to the SEP, which will be constructed and maintained by the Town of Franklin, MA. Below is a cost estimate breakdown for the SEP:

Demolition and Removal	Lump Sum	\$5,000
Hydrodynamic Separator	1 Ea @ \$12,000	\$12,000
Deep Sump Catch Basins	3 Ea @ \$5,000	\$15,000
Underground Stormwater Recharge System	1,200 SF @ \$20	\$24,000
Rain Garden	800 SF @ \$8.00	\$6,400
Miscellaneous Landscaping	Lump Sum	\$4,000
Total		\$66,400

In accordance with an agreement between the District and the Town of Franklin, the Town will be responsible for the construction, completion and maintenance of the project, as well as all costs therefor in excess of the \$60,000 provided by the District.

D. Environmental Benefits.

It is estimated that the SEP will remove 80% of both the total suspended solids and total phosphorus. The table below summarizes the estimated pounds of phosphorus, total suspended solids, and nitrogen removed with the stormwater improvements. The pollutant loads are based on EPA Standard estimates for "Residential - Medium Density" land use and the removal rates are based on standard engineering calculations for the specific type of BMP used in the design. Also, it is expected that that rain garden will be able to absorb 0.6 inches of stormwater before discharge into the stormwater sewer system.

Pollutant Type	Pollutant Load (lbs)	Removal Rate	Total Pollutant Removed (lbs per year)
Total Suspended Solids	6,450	89%	5,740
Phosphorus	11.0	94%	10.3
Nitrogen (TKN)	64.5	40%	25.8

In addition, the District expects that the public viewing material and newspaper article will have the added benefit of educating people about the importance of controlling stormwater runoff, and lead to further reductions of pollutants in stormwater.

E. Schedule.

Construction complete by October 1, 2012.

In the Matter of: Charles River Pollution Control District
Docket No. CWA-01-2011-0020

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order (Docket No. CWA-01-2011-0020) was sent to the following persons, in the manner specified on the date below:

Original and one copy
hand delivered:

Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Sq., Suite 1100
Mail Code: ORA18-1
Boston, MA 02109-3912

Copy, via Certified Mail,
Return Receipt Requested

Michael A. Leon
Nutter McClenan & Fish LLP
Seaport West
155 Seaport Boulevard, Boston, MA 02210

Date: _____

9/30/11



Jeffrey Kopf, Senior Enforcement Counsel
Office of Environmental Stewardship (SEL)
U.S. Environmental Protection Agency
Region I
5 Post Office Sq., Suite 100
Mail Code: OES04-4
Boston, MA 02109-3912
tel: (617) 918-1796
fax: (617) 918-0796
email: kopf.jeff@epa.gov