

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Steven J. Viggiani 9/24/13
Name of Case Attorney Date

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

Case Docket Number CAA-01-2013-0029

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:

Kevin McLaughlin, President
Fairhaven Shipyard Companies, Inc
50 Fort Street
Fairhaven, MA 02719

Total Dollar Amount of Receivable \$ 60,000 Due Date: 9/23/13

SEP due? Yes _____ No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

1st \$ 30,000 on 10/23/13
2nd \$ 15,369 on 3/22/14
3rd \$ 15,230 on 9/23/14
4th \$ _____ on _____
5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office

Phone Number _____



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

September 23, 2013

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

RECEIVED
SEP 23 2013
EPA ORG
Office of Regional Hearing Clerk

Re: In the Matter of Fairhaven Shipyard Companies, Inc.,
Docket No. CAA-01-2013-0029

Dear Ms. Santiago:

Please accept for filing the attached original and two copies of a Consent Agreement and Final Order ("CAFO") settling the above-captioned case. The CAFO was fully executed by the parties on September 20, 2013, and signed by the Regional Judicial Officer on September 23, 2013.

Please note that this enforcement action has no accompanying administrative complaint. Instead, pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2), this CAFO simultaneously commences and settles the action.

If you have any questions regarding the CAFO, please call me at (617) 918-1729. Thank you for your assistance with this matter.

Sincerely,

Steven J. Viggiani
Senior Enforcement Counsel

Attachments (original and two copies)

cc: Kevin McLaughlin

In the Matter of Fairhaven Shipyard Companies, Docket No. CAA-01-2013-0029

CERTIFICATE OF SERVICE

I certify that I hand-delivered to the office of the Regional Hearing Clerk of EPA Region 1 the original and two copies of the final Consent Agreement and Final Order ("CAFO") in the above-captioned case, together with a cover letter, and arranged to send a copy of the CAFO and letter via mail to Respondent at the address set forth below:

HAND-DELIVERY: (original and two copies)

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

VIA FIRST CLASS MAIL:

Kevin McLaughlin
President
Fairhaven Shipyard Companies, Inc.
50 Fort Street
Fairhaven, MA 02719

Date: 9/23/13



Steven J. Viggiani
Senior Enforcement Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED
SEP 23 2013
EPA ORC WS
Office of Regional Hearing Clerk

_____)	
In the Matter of:)	Docket No. CAA-01-2013-0029
Fairhaven Shipyard Companies, Inc.)	
50 Fort Street)	CONSENT AGREEMENT
Fairhaven, MA 02719)	AND FINAL ORDER
_____)	
Proceeding under Section 113(d) of the)	
Clean Air Act, 42 U.S.C. § 7413(d))	
_____)	

I. INTRODUCTION

1. The United States Environmental Protection Agency ("EPA"), Region 1, has alleged that Fairhaven Shipyard Companies, Inc. ("Fairhaven") has violated the Clean Air Act ("CAA"), 42 U.S.C. §§ 7401-7671q, and regulations implementing the CAA, at two shipbuilding and ship repair yards owned and operated by Fairhaven. EPA Region 1 ("Complainant") and Fairhaven ("Respondent") have agreed to settle this matter through an administrative Consent Agreement and Final Order ("CAFO"). EPA's regulations governing CAA administrative penalty actions and settlements are set out at 40 C.F.R. Part 22. Pursuant to 40 C.F.R. § 22.13(b), this CAFO simultaneously commences and concludes this proceeding.

II. ENFORCEMENT AUTHORITY

2. Sections 113(a)(3) and 113(d)(1) of the CAA, 42 U.S.C. §§ 7413(a)(3) and 7413(d)(1), provide, among other things, that EPA may commence an administrative penalty action against any person found in violation of CAA provisions and

their implementing regulations, including CAA Section 112, CAA subchapter V ("CAA Title V") and their implementing regulations. Pursuant to Section 113(d)(1) of the CAA, the Debt Collection Improvement Act ("DCIA"), 31 U.S.C. § 3701, and the DCIA's implementing regulations at 40 C.F.R. Part 19, EPA may assess penalties of up to \$37,500 per day for each violation of these CAA statutory provisions and regulations.

3. This CAFO alleges violations that occurred more than twelve months ago. EPA and the U.S. Department of Justice have jointly determined in accordance with Section 113(d)(1) of the CAA that this matter is appropriate for an administrative penalty action.

III. FACTUAL BACKGROUND

4. Fairhaven is a corporation organized under Massachusetts law.

5. In 2005 and 2008, Fairhaven purchased and began operating two shipbuilding and ship repair yards, known as the South and North Yards, respectively. The two Yards are located within a half mile of each other in Fairhaven, Massachusetts.

6. Both Yards build commercial fishing vessels, and both are involved in commercial and military ship repair operations that include, among other things, the application of paints, solvents, faring compounds, and sealants (collectively, "coatings") that contain volatile organic compounds, hazardous air pollutants, and volatile organic hazardous air pollutants.

7. Based on information obtained from EPA inspections conducted in 2010, Fairhaven's responses to CAA Section 114 Reporting Requirements issued by EPA in 2011, and other information provided by Fairhaven, EPA determined that Fairhaven's North and South Yards violated CAA hazardous air pollution regulations for

shipbuilding and ship repair yards, and violated CAA Title V permit requirements. EPA issued Fairhaven administrative compliance orders for the Yards on July 24, 2012.

IV. SHIPBUILDING NESHAP VIOLATIONS

8. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, EPA promulgated the National Emission Standards for Hazardous Air Pollutants for Shipbuilding and Ship Repair (Surface Coating) (the "Shipbuilding NESHAP") at 40 C.F.R. Part 63, Subpart II.

9. The Shipbuilding NESHAP applies to shipbuilding and ship repair operations at any facility that is a major source of HAPs. See 40 C.F.R. § 63.781(a). An "affected source" is any shipbuilding or ship repair facility subject to the NESHAP that has surface coating operations with a minimum 1,000 liters (264 gallons) annual marine coating usage. See 40 C.F.R. § 63.782.

10. The term "major source" is defined by the Shipbuilding NESHAP as "any source that emits or has the potential to emit, in the aggregate, 9.1 megagrams per year (10 tons per year) or more of any HAP or 22.7 megagrams per year (25 tons per year) or more of any combination of HAPs." See 40 C.F.R. § 63.782.

11. The effective date of the Shipbuilding NESHAP was December 15, 1995. See 60 Fed. Reg. 64330 (Dec. 15, 1995). Each owner or operator of an existing affected source was required to comply with the Shipbuilding NESHAP within two years after the NESHAP's effective date. See 40 C.F.R. § 63.784(a). Thus, existing affected sources were required to comply with the NESHAP by December 16, 1997.

12. The North and South Yards are major sources of HAPs and existing affected sources under the Shipbuilding NESHAP. Each Yard has been required to comply with the Shipbuilding NESHAP since December 16, 1997.

13. Pursuant to 40 C.F.R. §§ 63.787(a), 63.9(b)(1)(i), and 63.9(b)(2), the owner/operator of the North and South Yards was required to submit to EPA written notification that the Yards were subject to the Shipbuilding NESHAP within 180 days of when the Yards became subject to the NESHAP. These initial notifications were due to EPA in 1996.

14. At the time EPA issued Fairhaven administrative compliance orders for the Yards in July 2012, neither Fairhaven nor any previous owner/operator of the North and South Yards had submitted these initial notifications. Fairhaven submitted the initial notifications for the Yards on November 9, 2012. Accordingly, Fairhaven violated 40 C.F.R. §§ 63.787(a), 63.9(b)(1)(i), and 63.9(b)(2).

15. Pursuant to 40 C.F.R. § 63.787(b)(1), the owner/operator of the North and South Yards was required to submit an implementation plan addressing compliance with the requirements set forth in 40 C.F.R. § 63.787(b)(3). These implementation plans were required to be submitted to EPA in 1996.

16. At the time EPA issued Fairhaven administrative compliance orders for the Yards in July 2012, neither Fairhaven nor any previous owner/operator of the North and South Yards had submitted these implementation plans. Fairhaven submitted a draft implementation plan for both Yards in November 2012, and a final revised implementation plan in December 2012. Accordingly, Fairhaven violated 40 C.F.R. § 63.787(b)(1).

17. Pursuant to 40 C.F.R. § 63.788(c), the owner/operator of the North and South Yards is required to submit semiannual compliance reports to EPA. As of July 2012, neither Fairhaven nor any previous owner/operator of the North and South Yards had submitted any semiannual compliance reports for the Yards. Accordingly, Fairhaven violated 40 C.F.R. § 63.788(c).

18. Pursuant to 40 C.F.R. § 63.788(b)(2), the owner/operator of the North and South Yards is required to compile records on a monthly basis and maintain those records for a minimum of five years. As of July 2012, Fairhaven had failed to keep some, if not all, of these required monthly records. Fairhaven began keeping all of the required monthly records in January 2013. Accordingly, Fairhaven violated 40 C.F.R. § 63.788(b)(2).

19. Pursuant to 40 C.F.R. § 63.781(b), the owner/operator of the North and South Yards is required to label certain coatings as "low-usage exempt." At various times during and prior to 2012, Fairhaven failed to so label these coatings. Accordingly, Fairhaven violated 40 C.F.R. § 63.781(b).

V. CAA TITLE V PERMIT VIOLATIONS

20. Section 503(c) of the CAA, and EPA's State Operating Permit Program regulations at 40 C.F.R. § 70.5(a)(1), require a major source to apply for and obtain a CAA Title V operating permit within 12 months of becoming subject to a state's operating permit program.

21. Massachusetts received interim approval for its CAA Title V operating permit program in May 1996, and final approval in November 2001. See 40

C.F.R. Part 70, Appendix A. The Massachusetts operating permit program applies to, among other things, any facility that is subject to a federal NESHAP. See 310 CMR 7.00, Appendix C, Section 2(a)(2).

22. Since the North and South Yards are subject to the Shipbuilding NESHAP, the owner/operator of the facility must apply for and obtain Title V operating permits. To date, Fairhaven has neither applied for nor obtained Title V operating permits for the Yards. Accordingly, Fairhaven has violated Section 503(c) of the CAA and 40 C.F.R. § 70.5.

VI. GENERAL TERMS

23. The terms of this CAFO shall apply to and be binding on Complainant and on Respondent, its officers, directors, successors and assigns.

24. For the purposes of this CAFO and any action necessary to enforce it, Respondent admits that Complainant has jurisdiction over the subject matter described in the CAFO and that the CAFO states claims upon which relief can be granted against Respondent. Respondent neither admits nor denies the factual allegations and legal conclusions of violation contained in Sections III through V above. Respondent waives any right to a judicial or administrative hearing or appeal regarding the CAFO, or to otherwise contest the CAFO.

25. Respondent consents to the assessment of the civil penalty set out in Section VIII below. Respondent also consents to the issuance of any compliance provisions and any conditions specified in the CAFO.

VII. COMPLIANCE ACTIVITIES

26. Fairhaven shall comply with all applicable requirements of the Shipbuilding NESHAP.

27. Fairhaven has submitted the required initial notifications for the Yards in November 2012, and has submitted a final implementation plan for the Yards in December 2012. Fairhaven certifies that it has submitted timely compliance reports for the Yards for the semiannual compliance period ending in June 2013. Fairhaven further certifies that it has been keeping all required monthly records for the Yards since January 2013, and that any "low-usage exempt" coatings are now properly labeled in accordance with 40 C.F.R. § 63.781(b).

28. Pursuant to CAA Title V and the approved Massachusetts operating permit program, Fairhaven shall submit Title V operating permit applications for the Yards to the Massachusetts Department of Environmental Protection ("MA DEP") within 180 days after the effective date of this CAFO, or as otherwise agreed to in writing by EPA Region 1 and Fairhaven after consultation with MA DEP. At the time that Fairhaven submits its applications, Fairhaven shall provide written notice of its action to Steven J. Viggiani, Senior Enforcement Counsel, at the address provided in Paragraph 32 below.

VIII. CIVIL PENALTIES

29. Fairhaven shall pay a civil penalty totaling \$ 60,000, plus calculated interest, in accordance with terms and schedule set out below. EPA has determined that this is an appropriate settlement penalty based on the nature of the alleged violations and other relevant factors, including the demonstrated economic impact of the penalty on Fairhaven's business.

30. Fairhaven shall pay the civil penalty as follows: not later than 30 days after this CAFO becomes final, Fairhaven shall pay \$30,000; not later than 180 days after this CAFO become final, Fairhaven shall pay \$15,369, comprised of \$15,000 plus \$369 in calculated interest; and, not later than one year after this CAFO becomes final, Fairhaven shall pay \$15,230, comprised of \$15,000 plus \$230 in calculated interest.

31. To make each of these penalty payments, Fairhaven shall submit a cashier's or certified check, payable to the order of the "Treasurer, United States of America," and referencing the title of this action and the CAA case docket number (CAA-01-2013-0029). The check shall be sent via regular mail to the following address:

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

If Fairhaven sends the check via express mail, the following address shall be used:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Contact: Natalie Pearson
phone 314-418-4087

32. Fairhaven shall send a notice of each penalty payment, with a copy of each check, to:

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
Mail code ORA-18-1
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

and

Steven J. Viggiani
Senior Enforcement Counsel
U.S. EPA, Region 1
Mail code OES04-3
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

33. If Fairhaven fails to make any penalty payment in full by its due date, Fairhaven shall pay increased interest on the late amount, a quarterly nonpayment penalty, and any governmental enforcement expenses incurred to collect the late payment, in accordance with Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). In addition, the due dates of all remaining scheduled penalty payments under this CAFO shall be accelerated to the due date of the missed payment date, and Fairhaven shall pay increased interest, quarterly penalties and governmental expenses as provided above for the total of all the accelerated penalty payments.

34. Fairhaven certifies that it shall not use any payments made pursuant to this Section in any way as, or in furtherance of, a tax deduction for Fairhaven under federal, state or local law.

IX. EFFECT OF SETTLEMENT

35. This CAFO constitutes a settlement by EPA of all claims for federal civil penalties under Section 113 of the CAA for the violations set out in Sections IV and V through the effective date of this CAFO.

36. Nothing in this CAFO shall be construed to limit the authority of EPA or the United States to undertake any action against Respondent for criminal activity, or to respond to conditions which may present an imminent and substantial endangerment to the public health, welfare or the environment. EPA reserves all rights and remedies

available to it to enforce the provisions of this CAFO, the CAA and its implementing regulations and permits, and any other federal, state or local law or regulation.

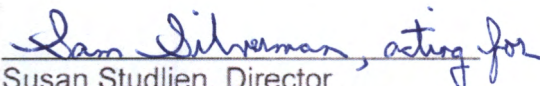
37. This CAFO shall not relieve Respondent of its obligations to comply with all applicable provisions of federal or state law, and shall not be construed to be a ruling or determination regarding any issue related to any federal, state or local permit. Except as provided in Paragraph 35 above, compliance with this CAFO shall not be a defense to any action subsequently commenced pursuant to environmental laws and regulations administered by EPA.

38. Each party shall bear its own costs, disbursements and attorney's fees in connection with this enforcement action, and specifically waives any right to recover such costs, disbursements or fees from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

39. Respondent's undersigned representative certifies that he or she is fully authorized by Respondent to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

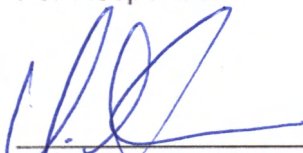
SO SIGNED:

For Complainant:


Susan Studlien, Director
Office of Environmental Stewardship
EPA Region 1

Date: 9-20-13

For Respondent:

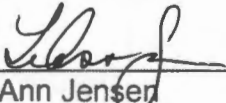

Kevin McLaughlin, President
Fairhaven Shipyard Companies, Inc.

Date: 9/11/13

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement, which shall be effective on the date that it is filed with the Regional Hearing Clerk.

SO SIGNED:



LeAnn Jensen
Acting Regional Judicial Officer
EPA Region 1

Date: September 23, 2013