

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for

Tonia Bandrowsicz
Name of Case Attorney

11/10/16
Date

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

Case Docket Number CWA-01-2016-0071

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:

Billings Diesel & Marine Services, Inc.
12 Moose Island Causeway
Stonington, ME 04881

Total Dollar Amount of Receivable \$ 41,000 Due Date: 12/7/16

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

November 10, 2016

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 Billings Diesel & Marine Services, Inc.
Docket No. Docket No. CWA-01-2016-0071

Dear Ms. Santiago:

In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) enclosed please find a fully executed Consent Agreement and Final Order resolving the above-referenced case.

Thank you for your attention to this matter.

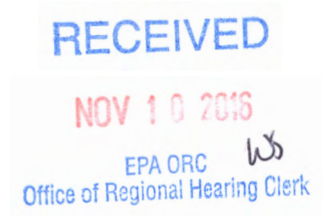
Sincerely,

A handwritten signature in black ink, appearing to read "Tonia Bandrowicz".

Tonia Bandrowicz,
Senior Enforcement Counsel
U.S. EPA

Enclosure

cc: Shephard S. Johnson, Jr., Esq.



Re: In the Matter of Billings Diesel & Marine Services, Inc.
Docket No. CWA-01-2016-0071

CERTIFICATE OF SERVICE

I certify that the foregoing letter to the Regional Hearing Clerk was sent to the following persons, in the manner specified, on the date below:

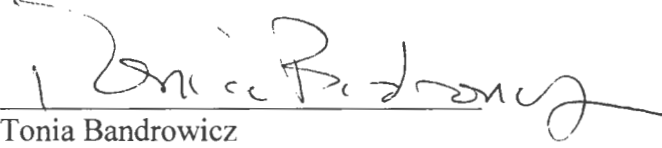
Original and one copy
hand-delivered:

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

Copy by certified mail,
return receipt requested:

Shephard S. Johnson, Jr., Esq.
Shephard S. Johnson, Jr. & Associates, P.C.
628 Pleasant Street, Suite 428
New Bedford, MA 02740

Dated: 11/10/16


Tonia Bandrowicz
Senior Enforcement Counsel
U.S. EPA – Region I
5 Post Office Square, Suite 100
Mail Code: OES04-3
Boston, MA 02109-3912
671-918-1734
bandrowicz.toni@epa.gov

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of)	Docket No. CWA-01-2016-0071
Billings Diesel and Marine Service, Inc.,)	CONSENT AGREEMENT AND
Stonington, Maine)	FINAL ORDER FOR CLASS II
Respondent.)	CIVIL PENALTY UNDER THE
)	CLEAN WATER ACT

I. INTRODUCTION

1. The Regional Administrator of the United States Environmental Protection Agency, Region I ("EPA") issues this Consent Agreement and Final Order ("CAFO") to Billings Diesel and Marine Service, Inc. ("Respondent"). EPA alleges that Respondent discharged untreated process wastewater containing pollutants into navigable waters of the United States without authorization, in violation of Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. §1311(a). The Parties agree to resolve this action by the issuance of this CAFO as provided under Section 309(g)(2)(B) of the CWA, 33 U.S.C. §1319(g)(2)(B), and, in accordance with Sections 22.13(b) and 22.18(b)(2) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation, Termination or Suspension of Permits*, at 40 C.F.R. Part 22 ("*Consolidated Rules*") and applicable delegations of authority.

2. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), EPA has notified the State of Maine Department of Environmental Protection of this action.

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

RECEIVED

NOV 10 2016

EPA ORC WS
Office of Regional Hearing Clerk

Statutory Requirements

4. The CWA is designed to restore and maintain the chemical, physical, and biological integrity of the nation's waters. Section 101(a) of the CWA, 33 U.S.C. § 1251(a).
5. To accomplish the objectives of the CWA, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into navigable waters except in compliance with the terms and conditions of a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and EPA's implementing regulations at 40 C.F.R. Part 122.
6. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines "person" to include "an individual, corporation, partnership [or] association."
7. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source."
8. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines "pollutant" to include, among other things, chemical wastes, biological materials, rock, sand, and industrial waste.
9. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines "point source" to include "any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged."
10. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as "the waters of the United States, including the territorial seas."
11. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), provides that the EPA Administrator may authorize a state to issue NPDES permits in accordance with the requirements of the CWA. On January 12, 2001, the EPA Administrator granted the State of Maine the authority to issue Maine Pollutant Discharge Elimination System ("MEPDES")

permits for all areas of the State other than Indian Country pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b).

12. Section 309(g) of the CWA, 33 U.S.C. § 1319, provides for the assessment of penalties for violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and for violating any condition or limitation in a NPDES permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

General Allegations

Discharge of industrial process wastewater containing pollutants into navigable waters of the United States without authorization of an NPDES permit

13. Billings Diesel and Marine Service, Inc. is a corporation organized under the laws of the State of Maine with its principal place of business at 72 Moose Island Road, Stonington, Maine.

14. Respondent is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

15. Respondent operates a full service marina and boat maintenance, repair, and storage facility in Stonington, Maine (the “Facility”).

16. At times the Facility discharges non-stormwater process wastewater from bottom power-washing boats on its marine railways into the Deer Isle Thorofare, a major shipping channel connecting Penobscot Bay to the waters around Mount Desert Island and the open Atlantic Ocean to the east (“Receiving Waters”). These discharges contain, among other things, sediments (such as rock, sand, and dirt), metals and associated industrial waste, which are “pollutant[s]” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

17. The Receiving Waters are waters of the United States, and, thereby, “navigable water[s],” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

18. On October 9, 2015, an authorized representative of EPA inspected the Facility for compliance with federal environmental laws and regulations under the CWA (the "Inspection").

19. During the Inspection, the EPA inspector observed industrial process areas that generate and discharge process water and associated pollutants directly to the Receiving Waters: the marine railway inside the "New Building;" the marine railway inside the "Rockefeller Building;" and the uncovered marine railway by the wash-pad and stormwater outfall #2.

20. During the Inspection, the EPA inspector observed boat maintenance and repairs being conducted, and/or evidence of having been conducted, at the locations identified in the preceding paragraph, as well as evidence that the industrial process wastewater from such discharges had reached the Receiving Waters.

21. These discharges of industrial process water were not authorized by a MEPDES permit, or any other state or federal permit.

22. By discharging industrial process water into the Receiving Waters from at least June 6, 2011 to October 6, 2015, without authorization under a MEPDES permit, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

II. CONSENT AGREEMENT

23. EPA and Respondent agree that settlement of this cause of action is in the public interest and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter. Therefore, before taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

24. Respondent admits the jurisdictional allegations set forth in Section I above and hereby waives any defenses it may have as to jurisdiction and venue.

25. Respondent neither admits nor denies the factual or non-jurisdictional allegations contained herein.

26. Respondent waives the right to a hearing under Section 309(g)(2)(B) of the CWA, 33 U.S.C. §1319(g)(2)(B), and to any appeal of the Final Order in this matter under Section 309(g)(8)(B) of the CWA, 33 U.S.C. §1319(g)(8)(B). Respondent consents to the issuance of a Final Order without further adjudication.

Penalty

27. EPA proposes, and Respondent consents to, the assessment of a civil penalty of \$41,000.00 for all violations contained in this CAFO.

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

29. Respondent shall make payment by cashier's, certified, or company check, payable to "Treasurer, United States of America," referencing the case name and docket number of this action (*In the matter of Billings Diesel and Marine Services, Inc.*, No. CWA-01-2016-0071) on the face of the check. The payment shall be made via regular U.S. Postal Service mail to:

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

In addition, at the time of payment, Respondent should also forward notice of payment of the civil penalty as well as copies of the payment check to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code ORA 18-1)
Boston, MA 02109-3912

and

Tonia Bandrowicz
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code OES 04-3)
Boston, MA 02109-3912

30. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. §1319(g)(9), a failure by Respondent to pay the penalty assessed by this CAFO in full by its due date shall subject Respondent to a civil action to collect the assessed penalty, plus interest at the prevailing rates, from the date this CAFO becomes final. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. §901.9(b), promulgated under 31 U.S.C. §3717. Any person who fails to pay on a timely basis the amount of an assessed penalty shall be required to pay, in addition to such amount and interest, attorney's fees, costs for collection proceedings, and a quarterly nonpenalty payment for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of such person's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

General Provisions

31. The provisions of this CAFO shall apply to and be binding on Respondent, its officers, directors, successors, and assigns.

32. The civil penalty provided under this CAFO, represents penalties assessed by

EPA within the meaning of 26 U.S.C. § 162(f) and are not tax deductible for purposes of federal, state, or local law. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agrees not to use those payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

33. This CAFO does not constitute a waiver, suspension, or modification of the requirements of the CWA or any regulations or permits promulgated thereunder, does not affect the right of the EPA Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law, or to undertake any action against the Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment, and payment of the penalty pursuant to this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged herein.

34. 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 CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondent's violation of any applicable provision of law, and the payment of the penalty pursuant to this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged herein.

35. Except as described in paragraph 30 above, the parties shall bear their own costs and fees in this action, including attorney's fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

36. Each undersigned representative of the parties to this CAFO that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

FOR BILLINGS MARINE SERVICES, INC.

Arden Billings Pres.

Date: 9-20-16

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

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

Date: 09/27/2016

FINAL ORDER

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

2. 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 Administrator unless a petition to set aside the order is filed by a commenter pursuant to Section 309(g)(4)(C) of the CWA, 33 U.S.C. § 1319(g)(4)(C), and 40 C.F.R. Part 22.

Date: _____

11/7/16



H. Curtis Spalding
Regional Administrator
U.S. Environmental Protection Agency, Region 1