

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Hugh W. Martinez 12/8/10
Name of Case Attorney Date

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

Case Docket Number CWA-01-2010-0033 & CAA-01-2010-0034

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:

Promet Marine Service Corporation
242 Allens Avenue
Providence, RI 02905

Total Dollar Amount of Receivable \$ 290,000 Due Date: 6/5/11

SEP due? Yes No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

1ST \$ 145,000 on 1/6/11

2nd \$ 147,960 on 6/5/11

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



U. S. ENVIRONMENTAL PROTECTION AGENCY

REGION 1 - NEW ENGLAND

5 Post Office Square, Suite 100 (OES 04-3)
Boston, MA 02109-3912

OFFICE OF
ENVIRONMENTAL STEWARDSHIP

HUGH W. MARTINEZ
direct: (617) 918-1867

RECEIVED

DEC 07 2010

EPA ORC WS
Office of Regional Hearing Clerk

December 7, 2010

BY HAND

Wanda I. Santiago, Regional Hearing Clerk
EPA Region 1 - New England
5 Post Office Square, Suite 100 (ORA 18-1)
Boston, MA 02109-3912

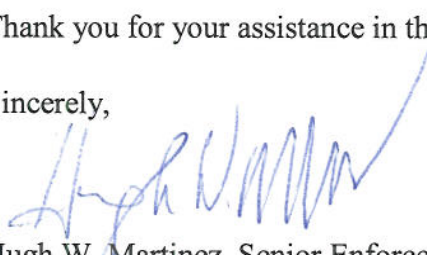
Re: In the Matter of: Promet Marine Services Corporation, Docket Nos. CWA-01-2010-0033 and CAA-01-2010-0034; Approved Consent Agreement and Final Order

Dear Ms. Santiago:

Please find enclosed for filing the original and one copy of a Consent Agreement and Final Order (CAFO) resolving the above-entitled enforcement case. Also enclosed is the original and one copy of a certificate of service documenting that, on this date, a copy of the CAFO was mailed to the Presiding Officer and Respondent's counsel, in the manner indicated.

Thank you for your assistance in this matter.

Sincerely,


Hugh W. Martinez, Senior Enforcement Counsel
Regulatory Legal Office
EPA Region 1

Enclosures

cc: Barbara A. Gunning, Administrative Law Judge
Gregory L. Benik, Esquire, Attorney for Promet
Joan Jouzaitis, EPA Region 1 (electronically)
Joseph Canzano, EPA Region 1 (electronically)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of:)	Docket Nos. CWA-01-2010-0033
)	CAA-01-2010-0034
Promet Marine Services Corporation)	CONSENT AGREEMENT AND
242 Allens Avenue)	FINAL ORDER FOR CIVIL
Providence, RI 02905,)	PENALTIES UNDER THE
)	CLEAN AIR ACT AND CLEAN
)	WATER ACT (CLASS II)
Respondent.)	

RECEIVED

DEC 07 2010

EPA ORC *WS*
Office of Regional Hearing Clerk

WHEREAS, the United States Environmental Protection Agency ("EPA"), as Complainant, issued an Administrative Complaint and Notice of Opportunity for Hearing ("Complaint") to Respondent, Promet Marine Services Corporation ("Promet" or "Respondent"), in May 2010;

WHEREAS, EPA and Respondent (collectively, the "Parties") agree that settlement of this cause of action is in the public interest and that entry of this Consent Agreement and Final Order ("CAFO") without further litigation is the most appropriate means of resolving the enforcement action commenced by the filing of the Complaint;

WHEREAS, the Parties agree to settle the action through the issuance of this CAFO, pursuant to 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;

NOW, THEREFORE, before taking any testimony, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby agreed and ordered as follows:

I. PRELIMINARY STATEMENT

1. EPA initiated this proceeding for the assessment of civil penalties of up to the statutory maximum amounts authorized pursuant to Section 309(g) of the Clean Water Act (“CWA” or “Water Act”), 33 U.S.C. § 1319(g), and Section 113(d) of the Clean Air Act (“CAA” or “Air Act”), 42 U.S.C. § 7413(d), both as amended by the Debt Collection Improvement Act of 1996 (“DCIA”), 31 U.S.C. § 3701, and implementing DCIA regulations at 40 C.F.R. Part 19.

2. The Complaint alleges that Respondent violated: a) pollutant discharge requirements under Section 301(a) of the Water Act, 33 U.S.C. § 1311(a); b) permitting requirements of the Rhode Island State Implementation Plan (“SIP”), at RI Air Pollution Control Regulation No. 9 (“RI Regulation 9”); c) operating permit requirements of Title V of the Air Act; and d) provisions of National Emission Standards for Hazardous Air Pollutants for Ship Building and Repair Facilities (“Ship NESHAP”) promulgated under CAA Section 112. The violations are alleged to have taken place at Respondent’s shipyard at 242 Allens Avenue in Providence, Rhode Island (the “Facility”).

3. Respondent filed an Answer to the Complaint in which it denied the violations alleged by EPA and requested a hearing pursuant to the Air Act, the Water Act, and the Consolidated Rules of Practice at 40 C.F.R. Part 22.

4. The provisions of this CAFO shall apply to and be binding on EPA and on Respondent, its officers, directors, agents, servants, employees, successors, and assigns.

5. Without admitting or denying the factual allegations contained in the Complaint, Respondent consents to the terms of this Consent Agreement and to the issuance of the Final Order hereinafter recited without further adjudication.

6. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and hereby waives any defenses it might have as to jurisdiction and venue.

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 waives its right to appeal the Final Order in this matter. Respondent waives the right to a hearing under Section 309(g)(2)(B) of the Water Act, 33 U.S.C. § 1319(g)(2)(B), and to an appeal of the Final Order under Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B).

II. TERMS OF SETTLEMENT

8. Respondent hereby certifies that the Facility is currently in compliance with the CAA and CWA requirements set forth in the Complaint except, with respect to the air permitting violations set forth in the Complaint, Respondent certifies that it has submitted complete applications to the appropriate officials within the Rhode Island Department of Environmental Management (“RIDEM”) for obtaining permits under RI Regulation 9 and CAA Title V. Until such time as Promet’s operations at the Facility are subject to duly-issued permit conditions, approved by RIDEM under RI Regulation 9 and under RI Regulation 29, requiring compliance with conditions no less stringent than those contained in Appendix A, Respondent shall comply with the volatile organic hazardous air pollutant (“VOHAP”) limits set forth in Appendix A for any marine coating applied during painting operations at the Facility.

9. In light of the above, the penalty factors specified under the CAA and CWA, and taking into account such other circumstances as justice may require, EPA has determined that it is fair and proper to assess a total civil penalty in the amount of \$290,000 for the violations alleged in the Complaint.

10. Respondent shall pay the penalty of \$290,000 in two equal installments. The first payment of \$145,000 shall be made within thirty (30) days of the date the CAFO becomes final. The second payment of \$147,860 includes \$2,860 in interest at a rate of four percent per annum and shall be made no later than 180 days from the date the CAFO becomes final.

11. Respondent shall make each penalty payment by submitting a bank, cashier's, or certified check, payable to "Treasurer, United States of America," in the required amount, to:

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

Respondent shall note the case name and docket numbers ("In the Matter of Promet Marine Services Corp.," EPA Docket Nos. CWA-01-2010-0033 and CAA-01-2010-0034) on each check and in an accompanying cover letter and shall provide copies of each check and cover letter to:

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

and

Hugh W. Martinez, Senior Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square
Suite 100 (OES 04-3)
Boston, MA 02109-3912

12. Pursuant to Section 113(d)(5) of the Air Act, 42 U.S.C. § 7413(d)(5), and Section 309(g)(9) of the Water Act, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay all or any portion of the penalty amount it will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Interest will be assessed on any portion of the civil penalty if it is not paid timely pursuant to the terms of this CAFO. In that event, interest will accrue from the date the CAFO was signed by the Regional Judicial Officer, at the "underpayment rate" established pursuant to 26 U.S.C. § 6621(a)(2). In the event that the penalty or any portion thereof is not paid when due, an additional charge will be assessed to cover the United States' enforcement expenses, including attorneys' fees and collection costs. In addition, a quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the penalty persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of Respondent's outstanding civil penalties and nonpayment penalties hereunder accrued 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.

13. If Respondent fails to make any payment of the civil penalty due and payable under this CAFO by the required date, files a voluntary petition in bankruptcy under the Bankruptcy Code of the United States, is adjudicated as bankrupt under such Code, is the subject of a petition filed in Federal or state court for the appointment of a trustee or

receiver in bankruptcy or insolvency, or makes a general assignment for the benefit of creditors, then the full balance of all outstanding civil penalties, together with all interest and penalties accrued at the rates specified herein, shall automatically and immediately become due and payable. Upon the occurrence of any of the events or conditions described in the preceding sentence, Respondent shall give immediate notice to EPA at the following address:

U.S. EPA, Region 1
5 Post Office Square
Suite 100 (OES 04-3)
Boston, MA 02109-3912
Attention: Hugh W. Martinez, Sr. Enforcement Counsel

14. All penalties, interest, and other charges shall represent penalties assessed by EPA, and shall not be deductible for purposes of federal taxes. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of Section 1.162-21 of the Internal Revenue Code, 26 U.S.C. § 1.162-21, and further agrees not to use such payments in any way as, or in furtherance of, a tax deduction under federal, state or local law.

15. Payment of the penalties, interest, or other charges does not waive, suspend, or modify the responsibility of Respondent to comply with the requirements of all of the federal laws and regulations administered by EPA and, except as provided in paragraph 16 herein, shall not be a defense to any actions subsequently commenced pursuant to said laws and regulations. This CAFO does not constitute a waiver, suspension, or modification of the requirements of Section 301 of the Water Act, 33 U.S.C. § 1311, or any regulations promulgated thereunder.

16. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Sections 113(a) and (d) of the CAA and Section 309 of the CWA, against Promet Marine Services Corporation, for the specific violations alleged in the Complaint. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with said laws and regulations. EPA reserves all its other criminal, civil, and equitable enforcement authorities, including the authority to address conditions at Respondent's Facility that may present an imminent and substantial endangerment to public health or the environment.

17. Each party shall bear its own costs and attorneys' fees in this proceeding, and Respondent specifically waives any right to seek attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504.

18. The undersigned representative of Respondent certifies that s/he is fully authorized by Promet Marine Services Corporation to enter into the terms and conditions of this CAFO and to execute and legally bind Promet to it.

For Respondent:

David A. Cohen
David A. Cohen, Pres.

11-15-10
Date

Print Name and Title
Promet Marine Services Corporation

Gregory L. Benik (HWA for)
Gregory L. Benik, Esquire
Benik & Associates, P.C.
931 Jefferson Boulevard, Suite 2008
Warwick, RI 02886

11-23-10
Date

For Complainant:

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


12/02/10
Date

Hugh W. Martinez
Hugh W. Martinez, Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. EPA, Region 1

11-23-10
Date

IV. FINAL ORDER

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.



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



Date

APPENDIX A

1. Until such time as the Facility is subject to marine coating VOHAP limits pursuant to duly issued RIDEM permits under RI Regulation 9 and RI Regulation 29, Promet shall limit VOHAP emissions from Facility painting operations as follows during all periods of operation:
 - a. Promet shall use coatings with VOHAP contents no greater than the levels specified in Section 2, below (Coatings List); and,
 - b. Should Promet choose to replace an existing coating, the new coating shall have a VOHAP content no greater than the coating it is replacing.
2. Coatings List:

<u>VOLATILE ORGANIC HAP (VOHAP) LIMITS FOR MARINE COATINGS</u>	
<u>Coating Category</u>	<u>VOHAP Limits</u> <small>(in grams per liter of coating, minus water and exempt compounds)</small>
General Use	340
Specialty –	
Air flask	340
Antenna	340
Antifoulant	400
Heat Resistant	420
High-gloss	340
High-temperature	500
Inorganic Zinc High Build	340
Military Exterior	340
Mist	610
Navigational Aids	340
Nonskid	340
Nuclear	420
Organic Zinc	340
Pretreatment Wash Primer	420
Repair and Maintenance of Thermoplastics	340
Rubber Camouflage	340
Sealant for Thermal Spray Aluminum	610
Special Marking	420
Specialty Interior	340
Tack Coat	610
Undersea Weapons Systems	340
Weld-through Preconstruction Primer	340

In re: Promet Marine Services Corp.
CWA-01-2010-0033
CAA-01-2010-0034

CERTIFICATE OF SERVICE

I hereby certify that the foregoing CAFO and Cover Letter to the Regional Hearing Clerk have been provided to the following persons on the date noted below:

*Original and one copy,
hand-delivered:*

Wanda I. Santiago, Regional Hearing Clerk
EPA Region 1 - New England
5 Post Office Square, Suite 100 (ORA 18-1)
Boston, MA 02109-3912

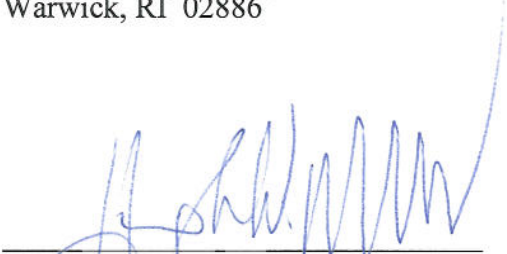
One copy by Pouch Mail:

Barbara A. Gunning, Administrative Law Judge
EPA Office of Administrative Law Judges
1200 Pennsylvania Ave., NW
Mail Code 1900L
Washington, D.C. 20460

*One copy by overnight
delivery and e-mail (pdf):*

Gregory L. Benik, Esquire
Benik & Associates, P.C.
Attorneys for Promet Marine
931 Jefferson Boulevard, Suite 2008
Warwick, RI 02886

Dated: 12-7-10



Hugh W. Martinez, Senior Enforcement Counsel
U.S. EPA, Region 1 (New England)
5 Post Office Square, Suite 100
Mail Code OES 04-3
Boston, MA 02109-3912
Phone (dir.): 617-918-1867
Fax: 617-918-0867
E-mail: martinez.hugh@epa.gov