

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Kathleen Woodward 11/29/12
Name of Case Attorney Date

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

Case Docket Number CWA-01-2012-0003

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:

Albee Realty Trust, et al.
117 Water Street
Milford, MA 01757

Total Dollar Amount of Receivable \$ 24,000 Due Date: 1/5/13

SEP due? Yes No Date Due _____

Instalment 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

November 27, 2012

Ms. Wanda Rivera
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: Albee Realty Trust, et al.
Consent Agreement and Final Order under the Clean Water Act
Docket No. CWA 01-2012-0003

Dear Ms. Rivera:

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 that reads "Kathleen E. Woodward".

Kathleen E. Woodward
Senior Enforcement Counsel

Enclosure

cc: George Hailer, Esq.

RECEIVED
NOV 29 2012
EPA ORC
Office of Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

RECEIVED

NOV 29 2012

EPA ORC *WS*
Office of Regional Hearing Clerk

In the Matter of)

Docket No. CWA-01-2012-0003

ALBEE REALTY TRUST, et al.)

CONSENT AGREEMENT AND
FINAL ORDER

117 Water Street)
Milford, Massachusetts 01757)

Respondents)

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 ("CWA" or "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/Termination or Suspension of Permits," at 40 C.F.R. Part 22 ("Part 22 Rules").

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

Docket No. CWA-01-2012-0003

I. PRELIMINARY STATEMENT

1. EPA initiated this proceeding against the Respondents pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), by filing an administrative Complaint against Respondents, Docket No. CWA-01-2012-0003 (the "Complaint"), on June 12, 2012.
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), the Commonwealth of Massachusetts has been given an opportunity to consult with EPA regarding the assessment of the administrative penalty for CWA violations against Respondents.
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 from June 20, 2012 through July 20 2012. EPA did not receive comments on the Complaint.

II. CONSENT AGREEMENT

5. Respondents stipulate that EPA has jurisdiction over the subject matter alleged in the Complaint.
6. Respondents waive any defenses they 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.

III. WAIVER OF RIGHTS

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

IV. RESPONDENTS' CERTIFICATION OF COMPLIANCE

8. By its signature on this Consent Agreement, Respondent certifies that it has corrected the alleged violations cited in the Complaint described in Paragraph 1 above, and will continue to operate the Site (as described in the Complaint) in compliance with the CWA, the federal regulations promulgated to implement the CWA, the terms and conditions of the NPDES General Permit for Storm Water Discharges From Construction Activities, and its Storm Water Pollution Prevention Plan (the "SWPPP").

V. PENALTY

9. Based upon the statutory penalty factors at Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA proposes and the Respondent consents to the assessment of a civil penalty in the amount of twenty-four thousand dollars (\$24,000).

VI. PAYMENT TERMS

10. Respondents shall pay the civil penalty set forth in Paragraph 9 of this CAFO no later than 10 calendar days after this CAFO is final.
11. Respondents 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 Albee Realty Trust, Lawrence Hill, Trustee, and Brian McCann, Trustee, CWA-01-2012-0003") to:

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

12. Respondents 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

VII. General Provisions

13. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), a failure by Respondents to pay the penalty assessed by this CAFO in full by the payment due date shall subject Respondents 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 10 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.
14. The civil penalty provided under this CAFO, and any interest, nonpayment penalties, and charges described in this CAFO, shall represent 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.

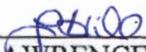
15. The provisions of this CAFO shall be binding upon Respondents, their officers, directors, agents, servants, employees, and successors or assigns.
16. Except as described in Paragraph 13 above, each party shall bear its own costs and attorneys fees in this proceeding.
17. Issuance of this CAFO constitutes 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) and (g), for all past violations of the CWA alleged in the Complaint referenced in Paragraph 1.
18. 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 Section 504 of the Act, 33 U.S.C. § 1364.
19. 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 or permits issued thereunder.
20. Each of the undersigned representatives of Respondents certifies that he or she is fully authorized by Respondents to enter into the terms and conditions of this CAFO and legally bind Respondents.

STIPULATED AND AGREED:

For ALBEE REALTY TRUST

Lawrence Hill
Trustee
Albee Realty Trust

Date: _____



LAWRENCE HILL
Trustee
Albee Realty Trust

Date: 10/11/12



BRIAN MCCANN
Former Trustee
Albee Realty Trust

Date: 10/11/12

For U.S. ENVIRONMENTAL PROTECTION AGENCY

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

Date: 11/19/12

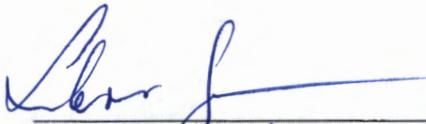
CONSENT AGREEMENT AND FINAL ORDER
U.S. EPA Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Docket No. CWA-01-2012-0003

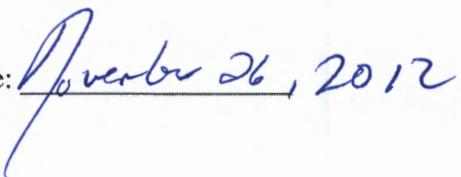
FINAL ORDER

21. The forgoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondents are 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~~ *LeAnn Jensen*
Acting Regional Judicial Officer
U.S. EPA, Region 1

Date:



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

Docket No. CWA-01-2012-0003

**In the Matter of: Albee Realty Trust, Lawrence Hill, Trustee and
Brian McCann, Trustee; Docket No. CWA 01-2012-0003**

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

Lawrence Hill, Trustee
c/o Hill Financial
117 Water Street
Milford, MA 01757

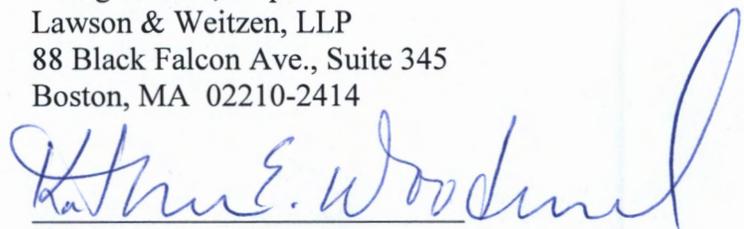
Brian McCann
c/o Hills Financial
117 Water Street
Milford, MA 01757

Copy by first-class mail to:

Martin Suuberg, Regional Director
Central Region
Massachusetts Department of Environmental
Protection
627 Main Street
Worcester, Massachusetts 01608

George Hailer, Esq.
Lawson & Weitzen, LLP
88 Black Falcon Ave., Suite 345
Boston, MA 02210-2414

Dated: November 27, 2012



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