

## Foot, Christine

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**From:** Foot, Christine  
**Sent:** Wednesday, February 2, 2022 1:25 PM  
**To:** Jensen, LeAnn; mousamuel@whitewoodlaw.com  
**Subject:** RE: In the Matter of Penson & Co. LLC; Docket No. CAA-01-2022-0025  
**Attachments:** Penson SuperCAFO rev signed.pdf

Good afternoon Ms. Jensen –

Please find the attached revised Consent Agreement, which includes a revised Para 36 and which the Parties have signed and are submitting for your review.

Thank you,  
Christine

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Christine M. Foot  
Enforcement Counsel  
US EPA - New England  
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617-918-1333

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**From:** Jensen, LeAnn <Jensen.Leann@epa.gov>  
**Sent:** Monday, January 31, 2022 12:19 PM  
**To:** mousamuel@whitewoodlaw.com; Foot, Christine <Foot.Christine@epa.gov>  
**Cc:** McGuire, Karen <Mcguire.Karen@epa.gov>  
**Subject:** In the Matter of Penson & Co. LLC; Docket No. CAA-01-2022-0025

Mr. Mu and Ms. Foot:

In accordance with the Consolidated Rules of Practice at 40 C.F.R. Part 22 and EPA’s debt collection regulations, the full amount of civil penalty payments should be paid within 30 days of the final order. 40 C.F.R. § 22.31(c) (“*Payment of a civil penalty*. The respondent **shall pay the full amount of any civil penalty assessed in the final order within 30 days after the effective date of the final order** unless otherwise ordered”) [emphasis added]. In addition, EPA’s Debt Collection Standard at 40 C.F.R. §13.18(a) states that “[w]henver, feasible, and except as otherwise provided by law, **debts owed to the United States, together with interest, penalty and administrative costs, as required by § 13.11, will be collected in a single payment**” [emphasis added]. Similarly, EPA’s 2015 Guidance on Evaluating a Violator’s Ability to Pay a Civil Penalty in an Administrative Enforcement Action at page 15 states “[a]s a general rule, the EPA requires respondents to pay civil administrative penalties in full within 30 days of the effective date of the final administrative order.”

Note, however that when the Administrator determines that a debtor is financially unable to pay the indebtedness in a single payment or that an alternative payment mechanism is in the best interest of the United States, the Administrator may approve repayment of the debt in installments. 40 C.F.R. §13.18. EPA’s guidance explains that a “limited exception to this practice may be acceptable if a respondent has demonstrated an

inability to pay the entire penalty in a single payment within the 30-day period (*e.g.*, due to fluctuations in cash flow), and it is in the Agency's best interest to accept an extended payment plan.”

Paragraph 36 of the above-referenced Consent Agreement allows for payment of the \$80,000 penalty in 24 monthly installments. As a result, language will need to be included in the above-referenced Consent Agreement that the installment payment plan is based upon respondent's inability to pay the entire penalty amount within 30 days, substantiated by EPA in accordance with its 2015 guidance, and is in best interest of the United States. Alternatively, if the settling parties prefer not to include such language in the agreement, I would like a memo or email from the EPA case attorney explaining and confirming that the installment payment plan is based on a substantiated ability to pay claim and that Karen McGuire, Director of EPA, Region 1, Enforcement and Compliance Assurance Division, who is authorized by lawful delegation to institute and settle civil administrative penalty assessment proceedings under CAA Section 205(c)(1), has determined that an extended payment plan is in the best interest of the United States. Once I receive this assurance, I will issue the Final Order for this matter.

Thank you for your attention to this matter.

LeAnn Jensen  
Regional Judicial Officer, U.S. EPA Region 1