

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Timothy M. Conway 3/9/17  
Name of Case Attorney Date

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

Case Docket Number CAA-01-2016-0063

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:

Champlin's Marina Resort &  
Tennis Club, Ltd  
80 West Side Road  
Block Island, RI

Total Dollar Amount of Receivable \$ 29,900 Due Date: 4/8/17

SEP due? Yes \_\_\_\_\_ No  Date Due \_\_\_\_\_

Installment Method (if applicable)

INSTALLMENTS OF:  
1<sup>st</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
2<sup>nd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
3<sup>rd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
4<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
5<sup>th</sup> \$ \_\_\_\_\_ 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  
BEFORE THE ADMINISTRATOR

RECEIVED

MAR 09 2017

EPA ORC *WS*  
Office of Regional Hearing Clerk

\_\_\_\_\_  
In the Matter of: )  
)  
Champlin's Marina Resort )  
and Tennis Club, LTD )  
80 West Side Road )  
Block Island, Rhode Island )  
)  
Respondent )  
\_\_\_\_\_ )

Docket No. CAA 01-2016-0063

**CONSENT AGREEMENT AND FINAL ORDER**

The Complainant, United States Environmental Protection Agency, Region 1 ("EPA"), alleges that Champlin's Marina Resort and Tennis Club, Ltd, located at 80 West Side Road, Block Island, Rhode Island ("Respondent") violated the National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines, found at 40 C.F.R. Part 63, Subpart ZZZZ ("RICE NESHAP"). These standards are promulgated pursuant to the Clean Air Act ("CAA", or "the Act").

EPA and Respondent agree to settlement of this matter through this Consent Agreement and Final Order ("CAFO") without the filing of an administrative complaint, as authorized under 40 C.F.R. § 22.13(b).

EPA and Respondent agree that settlement of this matter 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:

A. PRELIMINARY STATEMENT

1. The provisions of this CAFO shall apply to and be binding upon EPA and upon Respondent and its officers, directors, trustees, successors, and assigns. The “Effective Date” of this CAFO shall be defined as the date that this CAFO is filed with the Regional Hearing Clerk, as described in the Final Order attached to this Consent Agreement.

2. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO. Respondent waives any defenses it might have as to jurisdiction and venue.

Respondent consents to the terms of this CAFO.

3. Respondent neither admits nor denies the general or specific factual and legal allegations contained below in Section B. For purposes of this CAFO and any action necessary to enforce it, Respondent hereby waives its right to request a judicial or administrative hearing or otherwise to contest the allegations in this CAFO. Respondent waives any right to appeal this CAFO.

4. By signing this CAFO, Respondent certifies that it is presently operating in compliance with the RICE NESHAP and that it has fully addressed the violations alleged herein.

Statutory and Regulatory Authorities

5. Section 112 of the CAA, 42 U.S.C. § 7412, requires EPA to establish emission standards for categories of hazardous air pollutants (“HAPs”). These standards are known as National Emission Standards for Hazardous Air Pollutants (“NESHAPs”).

6. Regulations promulgated under CAA Section 112 are enforceable by EPA in accordance with Section 113 of the Act, 42 U.S.C. § 7413.

7. Section 113(d) of the Act, 42 U.S.C. § 7413(d), authorizes EPA to issue an administrative penalty order for violations of the RICE NESHAP regulations.

8. Under Section 113(d) of the CAA, 42 U.S.C. § 7413(d), and the Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015 (see 81 Fed. Reg. 43091 and 40 C.F.R. Part 19), EPA may assess penalties of up to \$37,500 for each day of each violation of the Act occurring after December 6, 2013, and up to \$44,539 for each day of each violation occurring after November 2, 2015. Section 113(d) of the Act limits EPA's authority to issue administrative complaints to matters where the total penalty sought does not exceed \$200,000 and the first alleged date of violation occurred no more than twelve months prior to the initiation of the action, unless the EPA Administrator and the Attorney General for the U.S. Department of Justice ("DOJ") jointly determine that a matter involving a larger penalty or longer period of violation is appropriate for administrative action. Pursuant to the Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015 (see 81 Fed. Reg. 43091 and 40 C.F.R. Part 19), the above-described penalty cap has been raised to \$356,312.

9. Although the violations alleged in Section B below occurred or commenced more than twelve months ago, EPA and DOJ have jointly determined that this matter is appropriate for administrative action.

**B. EPA FINDINGS**

10. Respondent operates a marina at 80 West Side Road, Block Island, Rhode Island (the "Facility").

11. On July 1, 2015, EPA conducted an on-site inspection of the Facility.

12. On February 9, 2016, EPA issued to Respondent a Notice of Violation ("NOV"). The NOV describes EPA's findings that Respondent had violated, and was still in violation of, certain CAA requirements relating to the RICE NESHAP.

13. Respondent's Facility is considered an "area source" for HAP emissions because the facility does not have the potential to emit 10 tons, or more, of a single HAP and does not have the potential to emit 25 tons, or more, of a combination of HAPs.

14. The RICE NESHAP applies to stationary reciprocating internal combustion engines.

15. According to 40 C.F.R. § 63.6590(a)(iii), stationary reciprocating internal combustion engines that commenced construction prior to June 12, 2006 are considered "existing" RICE units.

16. Based on EPA's inspection, EPA determined:

- a. Engines #1 and #2 located at the Facility are Caterpillar, Model 3406, diesel-powered, stationary reciprocating internal combustion engines subject to the RICE NESHAP.
- b. Engines #1 and #2 are each rated at 567 horsepower.
- c. Engines #1 and #2 were installed at the Facility in calendar year 2001.
- d. Prior to January 1, 2016, neither Engine #1 nor Engine #2 was an emergency engine or a limited use engine, as defined in the RICE NESHAP.

17. Pursuant to 40 C.F.R. § 63.6645(a)(2), the owner or operator of existing stationary RICE located at an area source of HAP emissions, subject to the RICE NESHAP, must submit an initial notification, as described in § 63.6645 and § 63.9(b). This notification was due by August 31, 2010.

18. Pursuant to 40 C.F.R. § 63.6650, the owner or operator of a stationary, non-emergency, non-black start, compression ignition RICE greater than 300 horsepower located at an area source of HAP emissions must submit semiannual compliance reports to EPA. Each

such report is due to EPA by July 31<sup>st</sup> of each year for the semiannual reporting periods ending on June 30<sup>th</sup> and by January 31<sup>st</sup> of each year for each reporting period ending on December 31<sup>st</sup>, beginning with the reporting period ending on June 30, 2013.

19. Respondent did not submit the required initial notification and semiannual reports for Engines #1 and #2 to EPA until April 15, 2016.

20. Accordingly, Respondent violated 40 C.F.R § 63.6645, § 63.6650, and § 63.9(b).

21. Pursuant to 40 C.F.R § 63.6612(a), an owner or operator of an existing stationary RICE located at an area source of HAP emissions must conduct any initial performance test or other initial compliance demonstration that applies according to Table 4 and Table 5 of the RICE NESHAP within 180 days after the compliance date specified in 40 C.F.R. § 63.6595 and according to the provisions in 40 C.F.R. § 63.7(a)(2). Both Engines #1 and #2 have a compliance date of May 3, 2013. Therefore, the due date for the initial performance test and/or initial compliance demonstration for Engines #1 and #2 was October 30, 2013.

22. Pursuant to 40 C.F.R. § 63.6645 and § 63.9(h), the owner or operator of an affected source that complies by conducting initial performance tests must submit to the Administrator a notification of compliance status, including performance test results, before the close of business on the 60<sup>th</sup> day following the completion of the performance test according to § 63.10(d)(2). Whereas, the owner or operator of an affected source that complies by conducting initial compliance demonstrations must submit to the Administrator a notification of compliance status before the close of business on the 30<sup>th</sup> day following the completion of the initial compliance demonstration.

23. As of January 1, 2016, Respondent changed operation of Engines #1 and #2 from primary power to emergency power only.

24. Between May 3, 2013 and January 1, 2016, Respondent violated 40 C.F.R § 63.6612(a), § 63.7(a)(2), § 63.6645 and § 63.9(h).

25. Pursuant to 40 C.F.R. § 63.6603, owners or operators of existing stationary RICE located at an area source of HAP emissions must comply with the requirements in Table 2d of Subpart ZZZZ.

26. Table 2d requires non-emergency, non-black start, CI, stationary RICE greater than 500 HP to:

- a. Limit the concentration of carbon monoxide (“CO”) in the stationary RICE exhaust to 23 parts per million, volumetric dry (“ppmvd”) at 15% oxygen; or
- b. Reduce CO emissions by 70 percent or more.

27. Respondent did not meet the requirements of Table 2d.

28. Accordingly, Respondent violated 40 C.F.R. § 63.6603.

**C. TERMS OF SETTLEMENT**

29. Without admitting or denying the specific factual allegations contained in this CAFO, Respondent consents to the terms and issuance of this CAFO, and consents for the purposes of settlement to the payment of the civil penalty as set forth in this CAFO.

30. Civil Penalty: Taking into account the particular facts and circumstances of this matter, with specific reference to the statutory factors of Section 113(e) of the Act, and other factors, EPA has determined that it is fair and proper to assess a civil penalty for the violations alleged in this CAFO in the total amount of twenty-nine thousand, nine hundred dollars (\$29,900). Respondent shall pay the civil penalty no later than thirty (30) days after the Effective Date.

31. Respondent shall make the penalty payment by submitting a bank, cashier's, or certified check, to the order of the "Treasurer, United States of America," in the amounts described in the preceding paragraph to:

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

Respondent may submit penalty payments via express mail to the following address:

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

Respondent shall note the case name and docket number of this action (CAA-01-2016-0063) on the check and in an accompanying cover letter, and shall simultaneously provide copies of the check and cover letter to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region I  
Suite 100, Mail Code ORA18-1  
5 Post Office Square  
Boston, MA 02109-3912

and

Timothy M. Conway  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency, Region I  
Suite 100, Mail Code OES4-03  
5 Post Office Square  
Boston, MA 02109-3912

32. Pursuant to Section 113(d)(5) of the CAA, if Respondent fails to pay the penalty amount it will be subject to an action to compel payment, plus interest, enforcement expenses,



and a nonpayment penalty. 42 U.S.C. § 7413(d)(5). Interest will be assessed on the penalty if it is not paid by the due date established herein. In that event, interest will accrue from the date the CAFO was signed by the EPA Regional Judicial Officer at the “underpayment rate” established pursuant to 26 U.S.C § 6621(a)(2). In the event that the penalty is not paid when due, an additional charge will be assessed to cover the United States’ enforcement expenses, including attorneys’ fees and collection costs. A quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the penalty persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent’s outstanding penalties and nonpayment penalties hereunder accrued as of the beginning of such quarter.

33. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state, or local permit.

**D. GENERAL PROVISIONS**

34. The civil penalty under Paragraph 30, above, any interest, and the nonpayment penalties and/or charges as described in Paragraph 32, above, shall represent penalties assessed by EPA and shall not be deductible for purposes of federal taxes, and shall not be deductible for purposes of state, or local taxes unless allowed by law.

35. Payment of the civil penalty, and any interest, non-payment penalties, and/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 shall not be a defense to any actions subsequently commenced pursuant to said laws and regulations.

36. This CAFO constitutes a settlement by EPA of all claims against Respondent for civil penalties pursuant to Section 113 of the Act for the violations alleged in Section B of this

CAFO. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondent to comply with all applicable provisions of federal, state, or local law. EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to address imminent hazards.

37. Except as described in Paragraph 32, above, each party shall bear its own costs and fees in this proceeding, including attorney's fees, and specifically waives 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 law.

38. Each party certifies that at least one of their undersigned representatives is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind such party to this document.

[The remainder of this page is intentionally left blank.]

FOR CHAMPLIN'S MARINA RESORT AND TENNIS CLUB, LTD

Name Joseph Shillo Date 1/22/17

Title Pres

FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

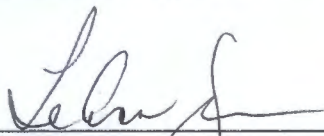
Susan Studlien \_\_\_\_\_ 03/02/2017  
Date  
Susan Studlien, Director  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region 1

Timothy M. Conway \_\_\_\_\_ 3/1/17  
Date  
Timothy M. Conway  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(b) of the United States Environmental Protection Agency's Consolidated Rules of Practice, the parties to this matter have forwarded an executed Consent Agreement to me for final approval. In accordance with 40 C.F.R. § 22.18(b) and Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the foregoing Consent Agreement resolving this matter is hereby incorporated by reference into this Final Order and is hereby ratified. Respondent, Champlin's Marina Resort and Tennis Club, Ltd, is ordered to pay the civil penalty amount specified in the Consent Agreement (\$29,900) in the manner indicated. The terms of the Consent Agreement will become effective on the date it is filed with the Regional Hearing Clerk.

U.S. ENVIRONMENTAL PROTECTION AGENCY



\_\_\_\_\_  
LeAnn Jensen, Acting Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 1

3/9/17  
\_\_\_\_\_  
Date

CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Consent Agreement and Final Order" in the matter of Champlin's Marina Resort and Tennis Club, Ltd., Docket No. CAA-01-2016-0063, was sent to the following persons on the date noted below:

Original and One Copy

Wanda Santiago

(Hand Delivered):

Regional Hearing Clerk

U.S. Environmental Protection Agency, Region 1

5 Post Office Square

Suite 100, ORA 18-1

Boston, MA 02109-3912

Copy (1<sup>st</sup> class mail)

Robert Goldberg

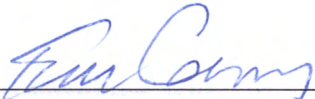
Goldberg Law Offices

226 Cottage Street

Pawtucket, Rhode Island 02860

Dated:

3/9/17



Timothy M. Conway

Senior Enforcement Counsel

U.S. Environmental Protection Agency

Region 1

5 Post Office Square

Suite 100, OES 04-3

Boston, MA 02109-3912