

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Kathleen E. Woodward 6/29/10  
Name of Case Attorney Date

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

Case Docket Number CWA-01-2009-0077

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:

Town of Winthrop, MA  
1 Metcalf Square  
Winthrop, MA 02152

Total Dollar Amount of Receivable \$ 8,000

Due Date: 7/22/10

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 \_\_\_\_\_

2010 JUL 13 A 10:00  
US EPA NEW ENGLAND  
MCO ACCOUNTING II

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I**

\_\_\_\_\_  
**IN THE MATTER OF**

Town of Winthrop  
1 Metcalf Square  
Winthrop, MA 02152

**Respondent.**  
\_\_\_\_\_

)  
)  
) **CONSENT AGREEMENT  
AND FINAL ORDER**

) **Docket No. CWA 01-2009-0077**  
)  
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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 (the "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 or Suspension of Permits," at 40 C.F.R. Part 22 ("Part 22 Rules").

**I. PRELIMINARY STATEMENT**

1. EPA initiated this proceeding against the Respondent pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), by filing an administrative complaint against Respondent, Docket No. CWA-01-2009-0077 (the "Complaint"), on August 13, 2009 and filing an amended administrative complaint ("Amended Complaint") on June 10, 2010.

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

Docket No. CWA-01-2009-0077

#### IV. TERMS OF SETTLEMENT

7. Based upon the statutory penalty factors at Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3) and Respondent's agreement to perform a Supplemental Environmental Project ("SEP"), and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of eight thousand dollars (\$8,000.00) plus interest if due pursuant to Paragraph 22 of this CAFO.

#### V. PAYMENT TERMS

8. Respondent shall pay the civil penalty set forth in Paragraph 7 of this CAFO no later than 30 calendar days after the date this CAFO is final.
9. Respondent 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 the Town of Winthrop, Massachusetts, CWA-01-2009-0077") to:

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

The date said check is deposited in the mail shall be considered the date that the payment is made.

- (a) **Phase I (beginning no later than the date of the Regional Judicial Officer's signature on the Final Order):** the Respondent will undertake publicity and a public education campaign to promote awareness of rainwater harvesting systems and encourage their use.
- (b) **Phase II (by August 1, 2010):** the Respondent will purchase 300 rainwater harvesting systems for distribution to Winthrop residents and/or businesses.
- (c) **Phase III (August-October 31, 2010):** the Respondent will use best efforts to distribute rainwater harvesting systems to Winthrop residents and/or businesses and continue using best efforts until all systems are distributed or until October 31, 2010, whichever happens sooner. If by October 31, 2010, the Town has not distributed all of the rainwater harvesting systems despite best efforts to do so, the Town will implement Phases IV, V and VI.
- (d) **Phase IV (Beginning February 15, 2011):** the Respondent will undertake publicity and a public education campaign to promote awareness of rainwater harvesting systems and encourage their use.
- (e) **Phase V (March 15 – October 31, 2011):** the Respondent will use best efforts to distribute rainwater harvesting systems to Winthrop residents and/or businesses and continue using best efforts until all systems are distributed or until October 31, 2011, whichever occurs sooner.
- (f) **Phase VI (November 1 – November 30, 2011):** If by November 1, 2011, despite Respondent's best efforts to distribute all 300 rainwater harvesting systems to Winthrop residents and/or businesses, rainwater harvesting systems remain undistributed, the Town will use the remainder on Town buildings to the extent practicable. If rainwater harvesting

**15. SEP Completion Report:**

a. **SEP Completion Report:** Respondent shall submit a SEP Completion Report to EPA within thirty (30) days of completion of the SEP. The SEP Completion Report shall contain the following information:

- (i) A detailed description of the SEP as implemented including a description Respondent's efforts to publicize the availability of the rainwater harvesting systems and to distribute the rainwater harvesting systems and the number of systems that were distributed by the SEP completion date;
- (ii) A description of any operating problems encountered and the solutions thereto;
- (iii) Itemized costs, documented by copies of purchase orders and receipts, canceled checks, or wire transfer records;
- (iv) Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order; and
- (v) A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

b. Respondent agrees that failure to submit the SEP Completion Report required by subsection a. above shall be deemed a violation of this Consent Agreement and Order and Respondent shall become liable for stipulated penalties pursuant to Paragraph 19 below.

any such underlying research and data to EPA not more than seven days after a request for such information. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this Consent Agreement, Respondent shall, by its Town Manager, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

**18. EPA acceptance of SEP Completion Report and Determination of SEP Compliance**

a. After receipt of the SEP Completion Report described in Paragraph 15 above, EPA will notify the Respondent in writing: (i) that EPA concludes that the SEP has been completed satisfactorily; (ii) that EPA has determined that the project has not been completed satisfactorily and is specifying a reasonable schedule for correction of the SEP or the SEP Completion Report; or (iii) that EPA has determined that the SEP does not comply with the terms of this CAFO and is seeking stipulated penalties in accordance with Paragraph 19 herein.

b. If EPA notifies Respondent pursuant to clause (ii) above that the SEP itself or the SEP Completion Report does not comply with the requirements of this CAFO,

amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.

(iii) If the SEP is completed in accordance with Paragraph 12, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of the difference between \$16,200 and the amount of eligible costs Respondent spent on the SEP, plus interest pursuant to Paragraph 22.

(iv) If the SEP is completed in accordance with Paragraph 12, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.

(v) For failure to submit the SEP Completion Report required by Paragraph 15(a) above or for failure to submit an adequate Completion Report, Respondent shall pay a stipulated penalty in the amount of \$100 per day for each day from the day after the report is due until the report is submitted, or in the case of an inadequate report, until the report is submitted with deficiencies addressed.

b. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

c. Stipulated penalties for subparagraphs (a)(i), (iii) and (v) above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

## VI. General Provisions

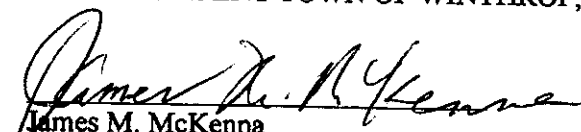
22. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), a failure by Respondent to pay the penalty assessed by this CAFO in full by the payment due date shall subject Respondent to a civil action to collect the assessed penalty, plus interest at current prevailing rates from the date the penalty was due pursuant to Paragraph 8 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 the 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.
23. The penalty specified in Paragraph 7 above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.
24. The provisions of this CAFO shall be binding upon Respondent and their successors or assigns.



29. The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to enter into the terms and conditions of this CAFO and legally bind Respondent.

STIPULATED AND AGREED:


For RESPONDENT TOWN OF WINTHROP, MASSACHUSETTS



James M. McKenna  
Town Manager  
Town of Winthrop, Massachusetts

Date: 5-12-10

For U.S. ENVIRONMENTAL PROTECTION AGENCY

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

Date: 06/21/10

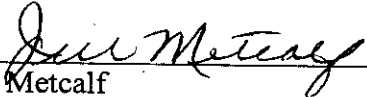
CONSENT AGREEMENT AND FINAL ORDER  
U.S. EPA Region 1  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

Docket No. CWA-01-2009-0077

**FINAL ORDER**

30. The forgoing Consent Agreement is hereby approved and incorporated by reference into this Order. The Respondent is ordered to comply with the terms of the above Consent Agreement, which will become final 30 days from the date it is signed by the Regional Judicial Officer unless a petition to set aside the ordered 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.

U.S. ENVIRONMENTAL PROTECTION AGENCY

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

Date: June 22, 2010

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

Docket No. CWA-01-2009-0077

SCOPE OF WORK

In accordance with the foregoing Consent Agreement and Final Order, Respondent shall complete the SEP as follows:

The Town of Winthrop Department of Public Works (DPW) will oversee a four-phase project to promote the use of rainwater harvesting systems designed to capture runoff from rooftops and store the water for nonpotable uses, such as lawn and garden watering. This is intended to (i) reduce pollutant transport through infiltration; (ii) conserve water and energy by reduction in usage of potable water from the MWRA system by replacing potable water with rainwater, where appropriate; (iii) reduce the amount of chemicals used to treat potable water from MWRA system; and (iv) reduce reliance on water from other watersheds.

As detailed below, the SEP will fund the purchase and distribution of approximately 300 rainwater harvesting systems in the Town. The Town proposes a multi-phased approach intended to maximize public participation in the Project.

SCHEDULE AND ESTIMATED COSTS

**Phase I: Publicity and Pre-Registration**

Beginning no later than the date of the Regional Judicial Officer's signature on the Final Order, the DPW will undertake a publicity and public education campaign to promote awareness of rainwater harvesting systems and encourage Town residents to participate in the Town's program. Publicity and public education efforts will include placement of advertisements in *The Winthrop Transcript*, the local weekly newspaper, and providing information on the Town website promoting the benefits of rainwater harvesting and the details of the systems to made available through the Town program.

In order to maximize participation through this publicity and education effort, DPW staff will develop a database of Town residents who may pre-register for a rainwater harvesting system. The Town will encourage Town residents to pre-register and pay a fee of \$20 in advance of pickup so that when the systems are later ordered and distributed, those residents who expressed an interest in participating will be incentivized to pick up their system during distribution. Based on the pre-registration response, if necessary, the Town will additionally publicize by placing 8.5 x 11-inch flyers in public places such as Town Hall, the library, schools, and grocery stores.

DPW will budget approximately \$500 for newspaper advertisements and staff time to develop publicity and educational materials, develop and maintain paper and electronic pre-registration databases, and develop web materials.

*Phase I Net Cost*.....\$500

## ESTIMATED ENVIRONMENTAL BENEFITS

Through capture and use of rainwater for non-potable water uses this project will reduce pollutant transport through infiltration. Further, the implementation and use of the 300 rainwater harvesting system barrels in the Town of Winthrop will reduce usage of potable water from the MWRA. In addition, bringing potable water from the western areas of the Commonwealth for use in the Town of Winthrop has considerable economic and environmental costs, including the costs associated with building and maintaining the infrastructure and the considerable energy costs associated with operation of the system. By using water harvested locally rather than transferred hundreds of miles, the use of rainwater harvesting reduces all of these costs and, hence, the impact on the environment. Similarly, use of harvested rainwater reduces use of chemicals required for water treatment. Use of stormwater runoff for purposes of irrigation means that a portion of this stormwater will recharge the existing groundwater rather than simply be conducted via the stormwater sewer system to the various water bodies surrounding Winthrop.

**In the Matter of: Town of Winthrop, Massachusetts**  
**Docket No. CWA 01-2009-0077**

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, MA 02109-3912

Copy by certified mail, return  
receipt requested:

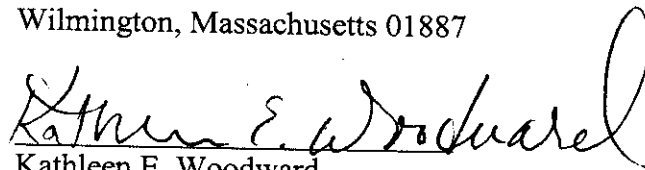
James M. McKenna  
Town Manager  
Town of Winthrop  
Town Hall  
1 Metcalf Square  
Winthrop, Massachusetts 02152

Copy by first-class mail to:

Marc J. Goldstein  
Beveridge & Diamond PC  
15 Walnut Street, Suite 400  
Wellesley, Massachusetts 02481-2133

Richard Chalpin, Regional Director  
Massachusetts Department of Environmental  
Protection  
Northeast Regional Office  
205B Lowell Street  
Wilmington, Massachusetts 01887

Dated: June 29, 2010



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