

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Michael Wagner  
Name of Case Attorney

9/27/11  
Date

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

Case Docket Number CWA-01-2011-0053

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:

Mayhew Steel Products, Inc.  
Turner Falls, MA

Total Dollar Amount of Receivable \$ 70,000

Due Date: 11/11/11

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



RECEIVED  
2011 SEP 27 A 11:41  
EPA ORC WS  
OFFICE OF  
REGIONAL HEARING CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I  
5 Post Office Square, Suite 100  
BOSTON, MASSACHUSETTS 02109-3912

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

**BY HAND**

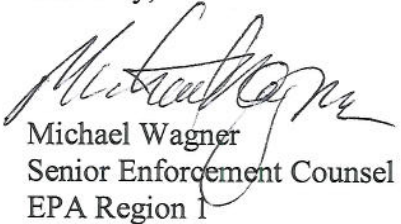
Re: In the Matter of: Mayhew Steel Products, Inc.; Docket No. CWA 01-2011-0053

Dear Ms. Santiago,

Enclosed for filing, please find a Consent Agreement and Final Order (CAFO) both initiating and settling the matter referenced above.

Thank you for your attention to this matter.

Sincerely,

  
Michael Wagner  
Senior Enforcement Counsel  
EPA Region 1

Enclosure

cc: Kenneth J. Albano, Esq.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

RECEIVED  
2011 SEP 27 A 11:41

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)  
In the Matter of: )  
)  
)  
Mayhew Steel Products, Inc. )  
Turner Falls, MA )  
)  
Respondent. )  
\_\_\_\_\_

Docket No. CWA-01-2011-0053

EPA ORC  
OFFICE OF  
HEARING CLERK  
WS

**CONSENT AGREEMENT AND  
FINAL ORDER FOR CLASS II  
CIVIL PENALTY UNDER  
CLEAN WATER ACT**

The Regional Administrator of the United States Environmental Protection Agency, Region I ("EPA"), issues this Consent Agreement and Final Order ("CAFO") to Mayhew Steel Products, Inc. ("Respondent"). The Respondent owns and operates a hand and edge tool manufacturing plant at 2 Sears Street Extension in Shelburne Falls, Massachusetts (the "Facility"). EPA alleges that Respondent violated Sections 301(a), 308 and 311 of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §§ 1311(a), 1318, and 1321. The parties agree to resolve this action by the issuance of this CAFO as provided under 40 C.F.R. § 22.13(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 ("Part 22").

**I. Description of Violations**

1. EPA alleges that Respondent: 1) discharged storm water associated with industrial activity into navigable waters of the United States without authorization in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a); 2) failed to apply for a National Pollutant Discharge Elimination System ("NPDES") permit in violation of Sections 308(a) and 402(p) of

the CWA, 33 U.S.C. §§ 1318(a) and 1342(p); and 3) failed to comply with the Oil Pollution Prevention regulations set forth at 40 C.F.R. Part 112 promulgated under the authority of Section 311(j), 33 U.S.C. § 1321(j).

## **II. Statutory Authority**

2. EPA takes this action under the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), for violation of Sections 301(a) and 308(a) of the Act, 33 U.S.C. §§ 1311(a) and 1318(a), and under Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6), for violation of Section 311(j) of the Act, 33 U.S.C. § 1321(j). Pursuant to Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), EPA notified the State of Massachusetts of this action, and has consulted with the Massachusetts Department of Environmental Protection ("MassDEP") on this action.

## **III. Unpermitted Stormwater Violations**

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into navigable waters of the United States except in compliance with the terms and conditions of an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

4. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines "person" to include "an individual, corporation, [or] partnership." The Respondent is a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

5. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source."

6. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines "pollutant" to include,

inter alia, dredged spoil, rock, sand and industrial waste.

7. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as "the waters of the United States, including the territorial seas." Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines "point source" to include "any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged."

8. From at least October 30, 2000 through the present, Mayhew has conducted activities in association with the operation of a hand and edge tool manufacturing plant that have resulted in the discharge of "storm water associated with industrial activity," as defined at 40 C.F.R. § 122.26(b)(14)(xi), containing pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), to waters of the United States through one or more municipally-owned storm water outfalls.

9. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), requires any storm water discharge "associated with industrial activity" to be authorized by a NPDES permit.

10. The Deerfield River is a "wate[r] of the United States" as defined at 40 C.F.R. § 122.2 and a "navigable wate[r]" as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

11. The municipally-owned storm water outfalls through which the Respondent discharged stormwater constitute "point source(s)" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

12. As "operator" of the Facility, Mayhew was required to obtain NPDES permit coverage for the industrial activity at the Site.

13. Mayhew did not apply for coverage under the 2000 MSGP, and did not apply for coverage under the 2008 MSGP until December 16, 2008, when it filed a Notice of Intent.

14. Therefore, from at least October 30, 2000, through December 15, 2008, Mayhew's discharge of "storm water associated with industrial activity," as defined at 40 C.F.R. §122.26(b)(14)(xi), from a point source to waters of the U.S. without a permit, occurred in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### **IV. Failure to Apply for a Permit**

15. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes EPA to require the owner or operator of any point source to provide such information as EPA may reasonably require to carry out the objectives of the CWA, including the issuance of NPDES permits pursuant to CWA section 402, 33 U.S.C. § 1342.

16. Pursuant to Sections 308 and 402 of the CWA, 33 U.S.C. §§ 1318 and 1342, EPA promulgated storm water discharge regulations at 40 C.F.R. § 122.26. Forty C.F.R. § 122.26(c) requires dischargers of storm water "associated with industrial activity" to apply for an individual permit or to seek coverage under a promulgated general permit. Forty C.F.R. § 122.26(b)(13) defines "storm water" to include storm water runoff, snow melt runoff, and surface runoff and drainage.

17. Section 402(p) of the CWA, 33 U.S.C. § 1342(p) and implementing regulation 40 C.F.R. § 122.26(a)(1)(ii), require that facilities discharging storm water "associated with industrial activity" are required to obtain a permit.

18. Forty C.F.R. § 122.26(b)(14)(xi) specifies that "storm water discharge associated with industrial activity" includes storm water discharge from facilities classified under Standard Industrial Classification ("SIC") code 34 (including 3423--Hand and Edge Tools).

19. In October 2000, EPA issued Multi-Sector General Permits for Storm Water

Discharges Associated with Industrial Activities ("2000 MSGP"). The expiration date for the 2000 MSGP was set for October 30, 2005.

20. In September 2008, EPA issued Multi-Sector General Permits for Storm Water Discharges Associated with Industrial Activities ("2008 MSGP"). Although the expiration date for the 2000 MSGP was set for October 30, 2005, it was administratively extended and remained in effect until the effective date of the 2008 MSGP, which was September 29, 2008. Dischargers previously covered under 2000 MSGP and new dischargers commencing discharges between October 30, 2005 and January 5, 2009 were required to submit an NOI to be covered under the 2008 MSGP by no later than January 5, 2009. The expiration date of the 2008 MSGP is September 29, 2013.

21. As "operator," Mayhew was required to obtain NPDES permit coverage for the industrial activity at the Facility.

22. Mayhew did not apply for coverage under the 2000 MSGP, and did not apply for coverage under the 2008 MSGP until December 16, 2008, when it filed a Notice of Intent

23. By failing to timely apply for an individual permit or submit an NOI for coverage under the 2000 MSGP and the 2008 MSGP, Respondent violated Section 308(a) of the CWA, 33 U.S.C. § 1318(a), each day from at least October 30, 2000 through December 15, 2008, in violation of Section 308 of the CWA, 33 U.S.C. § 1318.

#### **V. Oil Pollution Prevention**

24. Section 311(j)(1) of the Act, 33 U.S.C. § 1321(j)(1), provides that the President shall issue regulations "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore and offshore facilities, and to contain

such discharges . . . ."

25. Under the authority of Section 311(j)(1) of the Act, the Oil Pollution Prevention regulations establish procedures, methods, and requirements for preventing the discharge of oil. These requirements apply to owners or operators of non-transportation-related facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products that, due to their location, could reasonably be expected to discharge oil in harmful quantities (as defined in 40 C.F.R. Part 110) to navigable waters of the U.S. or adjoining shorelines.

26. Under 40 C.F.R. § 112.3 an owner or operator of an onshore facility subject to the Oil Pollution Prevention regulations must prepare a Spill Prevention Control and Countermeasure ("SPCC") Plan in writing in accordance with 40 C.F.R. § 112.7, and fully implement such plan.

27. Respondent is a "person" within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7), 1362(5).

28. Respondent is the "owner or operator" within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of the Facility.

29. Respondent is engaged in storing, using, and consuming "oil" or oil products located at the Facility within the meaning of 40 C.F.R. § 112.2.

30. The facility has an aggregate above-ground storage capacity greater than 1,320 gallons of oil in containers each with a shell capacity of at least 55 gallons.

31. The Facility is an "onshore facility" within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.



32. The Facility is a "non-transportation-related" facility within the meaning of 40 C.F.R. § 112.2 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

33. "Navigable waters" of the United States are defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1.

34. Based on the above, the Facility is therefore a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable waters of the United States or its adjoining shorelines in a harmful quantity.

35. Respondent is therefore subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112 at the Facility.

36. The Facility neither prepared nor implemented an SPCC Plan until August 14, 2009.

37. From at least February 2005 through August 13, 2009, Respondent failed to prepare and implement an SPCC Plan, to adequately provide for measures which would prevent the discharge of oil from reaching waters of the United States, and to implement specific requirements listed in 40 C.F.R. §§ 112.7 and 112.8. The facility lacked appropriate secondary containment for some of its aboveground bulk oil storage tanks as required by 40 C.F.R. §§ 112.7(c) and 112.8(c), in violation of Section 311(j) of the CWA, 33 U.S.C. § 1321(j).

38. Pursuant to Section 311(b)(6)(C) of the Act, 33 U.S.C. § 1321(b)(6)(C), the Complainant is providing public notice of and reasonable opportunity to comment on this proposed issuance of a Final Order assessing administrative penalties against Respondent. If a hearing is held on this matter, members of the public who submitted timely comments on this proceeding have the right under Section 311(b)(6)(C) of the Act to be heard and present evidence

at the hearing.

## **VI. CONSENT AGREEMENT**

39. EPA and Respondent agree that the above matter constitutes a disputed claim and that settlement of the above matter is in the public interest, and that entry of this CAFO without 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:

40. Respondent admits the jurisdictional allegations in Sections I and II above.

41. Respondent neither admits nor denies the specific factual allegations contained in Section III above.

## **VII. Waiver of Rights**

42. Respondent waives the right to a hearing under Sections 309(g)(2)(B) and 311(b)(6)(B)(ii) of the Act, 33 U.S.C. §§ 1319(g)(2)(B) and 1321(b)(6)(B)(ii), to appeal any Final Order in this matter under Sections 309(g)(8)(B) and 311(b)(6)(G)(ii) of the Act, 33 U.S.C. §§ 1319(g)(8)(B) and 1321(b)(6)(G)(ii), and consents to the issuance of a Final Order without further adjudication.

## **VIII. Penalty**

43. Complainant proposes, and Respondent consents to, the assessment of a civil penalty of seventy thousand dollars (\$70,000).

## **IX. Payment Terms**

44. In agreeing to the penalty described in paragraph 43 above, EPA has taken into account the statutory penalty factors at Sections 309(g)(3) and 311(b)(8) of the CWA, 33 U.S.C.

§§ 1319(g)(3) and 1321(b)(8). Respondents shall pay a total penalty of \$70,000 which shall be due within 15 calendar days of the effective date of this CAFO.

45. Respondent shall pay a penalty of \$60,000 for violation of Sections 301 and 308 of the CWA and shall make payment by cashier's or certified check, payable to "United States Treasurer," and referencing the title and docket numbers of the action ("In the Matter of Mayhew Steel Tools, Inc., CWA-01-2011-0053").

46. Respondent shall pay a penalty of \$10,000 for violation of Sections 311(j) of the CWA and shall make payment by cashier's or certified check, payable to "Treasurer, United States of America," and referencing the title and docket numbers of the action ("In the Matter of Mayhew Steel Tools, Inc., CWA-01-2011-0053") and "Oil Spill Liability Trust Fund - 311."

47. The payments shall be mailed via regular U.S. Postal Service mail, to:

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

48. Respondent shall note on the penalty payment checks the title and docket number of this case. Respondent shall submit copies of the checks to the following people:

Wanda Santiago  
Regional Hearing Clerk (ORA18-1)  
U.S. Environmental Protection Agency  
Region 1  
5 Post Office Square, Suite 100  
Boston, Massachusetts 02109-3912

and

Michael Wagner  
Office of Environmental Stewardship (OES04-3)

U.S. Environmental Protection Agency  
Region I  
5 Post Office Square, Suite 100  
Boston, Massachusetts 02109-3912.

49. The penalty provided for herein is a penalty within the meaning of 26 U.S.C. §162(f) and is not tax deductible for purposes of federal, state, or local law.

#### **X. General Provisions**

50. Pursuant to Sections 309(g)(9) and 311(b)(6)(H) of the CWA, 33 U.S.C. §§ 1319(g)(9) and 1321(b)(6)(H), a failure by the Respondent to pay the penalty assessed by this CAFO in full by its due date shall subject Respondent to a civil action to collect the assessed penalty, plus interest at current prevailing rates from the date of this CAFO. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(b), 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 twenty 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.

51. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

52. The Final Order does not constitute a waiver, suspension or modification of the requirements of Sections 301, 308 or 311 of the CWA or any regulations promulgated

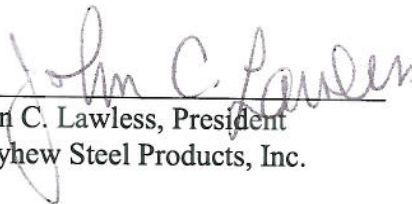
thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law.

Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the violations and facts stipulated to herein.

53. Except as described in paragraph 50 of the Consent Agreement, each party shall bear its own costs and attorney's fees in connection with the action resolved by this CAFO.

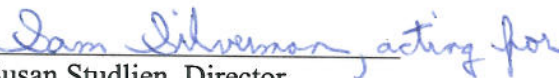
FOR Mayhew Steel Products, Inc.

Date: 7/13/11

  
\_\_\_\_\_  
John C. Lawless, President  
Mayhew Steel Products, Inc.

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: 8-11-11

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

### III. FINAL ORDER

54. EPA has provided a thirty day opportunity for public notice and comment on this proposed CAFO pursuant to Sections 309(g)(4)(A) and 311(b)(6)(C)(i) of the Act, 33 U.S.C. §§ 1319(g)(4)(A) and 1321(b)(6)(C)(i), and 40 C.F.R. § 22.45(b), and has not received any public comments.

55. 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 unless a petition to set aside the order is filed by a commenter pursuant to Section 309(g)(4) (C) of the CWA, 33 U.S.C. 1319(g)(4) (C) or Section 311(b)(6)(C)(iii) of the CWA, 33 U.S.C. 1321(b)(6)(c)(iii), and 40 C.F.R. Part 22.

56. The Respondent is ordered to comply with the terms of the Consent Agreement, which will become final thirty (30) days from the date it is signed by the Regional Judicial Officer.

Date:

September 27, 2011 

Jill T. Metcalf

Acting Regional Judicial Officer

U.S. Environmental Protection Agency, Region 1

**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:

Two copies, hand-delivered:


Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 1  
5 Post Office Square, Suite 100  
Mail Code: ORA18-1

A true and correct copy, by certified mail, return receipt requested and a copy of the Part 22 Rules:

Kenneth J. Albano, Esquire  
Bacon Wilson, P.C.  
33 State Street Springfield, MA 01103

Date:

9/27/2011

  
Michael Wagner  
Senior Enforcement Counsel