

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Jeffrey Kopf 10/25/11
Name of Case Attorney Date

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

Case Docket Number CWA-01-2011-0075

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:

Goffstown Truck Center, Inc.
1 Social Street
Suite 3D
Woonsocket, RI 02895

Total Dollar Amount of Receivable \$ 25,000 Due Date: 11/24/11

SEP due? Yes No Date Due _____

Installment 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 1

RECEIVED

2011 OCT 25 P 4: 07

EPA ORC
OFFICE OF
REGIONAL HEARING CLERK

IN THE MATTER OF:)

GOFFSTOWN TRUCK CENTER, INC.)

1 Social Street)
Suite 3D)
Woonsocket, RI, 02895)

Respondent)
_____)

Docket No. CWA-01-2011-0075

**CONSENT AGREEMENT AND
FINAL ORDER FOR CLASS II CIVIL
PENALTY UNDER SECTION
311(b)(6)(B)(ii) OF THE
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 Goffstown Truck Center, Inc. (“Respondent”). EPA alleges that Respondent violated Section 311(j) of the Clean Water Act (the “Act”), 33 U.S.C. § 1321(j). 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 Rules”).

I. DESCRIPTION OF VIOLATIONS

1. EPA alleges that Respondent failed to comply with the Oil Pollution Prevention regulations set forth at 40 C.F.R. Part 112 under the authority of Section 311(j) and other provisions of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*

A. Statutory and Regulatory Authority

2. EPA takes this action under the authority of Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), for violation of Section 311(j) of the Act, 33 U.S.C. § 1321(j).

B. General Allegations

3. 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”

4. Under the authority of Section 311(j)(1) of the Act, 33 U.S.C. § 1321(j)(1), 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.

5. 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.

6. 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).

7. 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 facilities that store and distribute petroleum products located at 30 King Street in Auburn, New Hampshire (“Auburn Facility”) and 58 Carding Mill Road in Weare, New Hampshire (“Weare Facility”) (collectively, “each Facility”).

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

9. Each Facility has an aggregate above-ground oil storage capacity greater than 1,320 gallons.

10. Each 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.

11. Each 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.

12. “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.

13. Based on the above, each 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.

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

C. Allegations of Findings of Violation

15. On November 9, 2010 an authorized EPA representative inspected the Auburn Facility for compliance with Section 311(j) of the Act, 33 U.S.C. § 1321(j), and in particular, the requirements of the Oil Pollution Prevention regulations, 40 C.F.R. Part 112.

16. EPA determined that the facility had not fully implemented an SPCC Plan, in violation of Section 311(j) of the Act, 33 U.S.C. § 1321(j).

17. On March 17, 2011 an authorized EPA representative inspected the Weare Facility for compliance with Section 311(j) of the Act, 33 U.S.C. § 1321(j), in particular, the requirements of the Oil Pollution Prevention regulations, 40 C.F.R. Part 112.

18. EPA determined that the facility had not implemented an SPCC Plan, in violation of Section 311(j) of the Act, 33 U.S.C. § 1321(j).

19. Based on these inspections and on documents submitted by Respondent to EPA subsequent to the inspection, EPA has determined that Respondent failed to prepare and fully implement an SPCC plan at each Facility in accordance with the provisions of 40 C.F.R. § 112.7 in violation of 40 C.F.R. § 112.3.

20. Respondent's failure to prepare and fully implement an SPCC plan for each Facility violated 40 C.F.R. § 112.3. Respondent is in violation of these requirements each day beginning with the period it was required to implement a plan under 40 C.F.R. Part 112, and ending when it fully implements an SPCC Plan for each Facility consistent with all the requirements of 40 C.F.R. Part 112.

21. As alleged in the preceding paragraph, and pursuant to Section 311(b)(6)(B)(ii) of the Act and 40 C.F.R. § 19.4, Respondent is liable for civil penalties of up to \$11,000 per day for each day during which the violations continue for violations occurring between March 15, 2004 and January 12, 2009, and \$16,000 per day for each day during which the violations continue, for violations occurring after January 12, 2009.

II. CONSENT AGREEMENT

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, without adjudication of any issue of fact or law, and upon consent and agreement of the parties to this action hereby stipulate as follows:

22. Respondent admits the jurisdictional allegations in Section I above.

23. Respondent neither admits nor denies the specific factual allegations contained in Section I above.

A. Waiver of Rights

24. Respondent waives the right to a hearing under Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), to appeal this Final Order in this matter under Section 311(b)(6)(G)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(G)(ii), and consents to the issuance of this Final Order without further adjudication.

B. Civil Penalty

25. Complainant proposes, and Respondent consents to, the assessment of a civil penalty of \$25,000. EPA has determined that this is an appropriate settlement penalty based on the specific facts and circumstances of this case, with reference to the relevant penalty factors identified at Section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8).

C. Payment Terms

26. Based on the foregoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

27. Within 30 days of the effective date of the Final Order, Respondent shall submit a cashier's or certified check, payable to "Environmental Protection Agency" and referencing the title and docket number of the action ("In the Matter of: Goffstown Truck Center, Inc., Docket No. CWA-01-2011-0075") and "Oil Spill Liability Trust Fund - 311" in the amount specified in Paragraph 25 to:

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

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

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

and

Jeffrey Kopf
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100
Mail Code OES04-4
Boston, Massachusetts 02109-3912

D. General Provisions

29. Pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H), a failure by the Respondent to pay the penalty amounts 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 the current prevailing rates from the effective date of the 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 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.

30. Respondent certifies that it shall not use any portion of its settlement penalty payment in any way as, or in furtherance of, a tax deduction for Respondent, or for any of Respondent's corporate affiliates or officers, under federal, state or local law.

31. The terms of this CAFO shall apply to and be binding on EPA and on Respondent, its officers, directors, agents, servants, employees, successors and assigns.

32. This CAFO constitutes a settlement by EPA of all claims for federal civil penalties under Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6), for the violations set out in Section I above.

33. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, 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 alleged violations and facts set forth herein.

34. Except as described in paragraph 29 of the Consent Agreement, each party shall bear its own costs, disbursements and attorneys fees in connection with this enforcement action, and specifically waives any right to recover such costs, disbursements or fees from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

35. Respondent's undersigned representative certifies that he or she is fully authorized by Respondent to enter into the terms and conditions of this Consent Agreement and to execute and legally bind Respondent to it.


FOR GOFFSTOWN TRUCK CENTER, INC:

Date: 9/12/11


Greg Stinson, Vice-President - Operations

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: 09/16/11


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

III. FINAL ORDER

36. The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final 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 311(b)(6)(D) of the Act, 33 U.S.C. 1321(b)(6)(D), and 40 C.F.R. Part 22.

Date: October 25, 2011



Jill Metcalf
Acting Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1

In the Matter of: Goffstown Truck Center, Inc.,
Docket No. CWA-01-2011-0075 Consent Agreement and Final Order

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:

Original and 1 copy
hand delivered:

Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Square
Suite 100
Boston, MA 02109-3912

Copy via email
and a copy of
Part 22 Rules

Gregg Stinson
Student Transportation of America, Inc.
1 Social Street
Woonsocket, RI 02895

and

Scott Furman
Tannenbaum Helpert Syracuse & Hirschtritt, LLP
900 Third Avenue
New York, NY 10022

Date:

10/25/11



Jeffrey Kopf
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region I
5 Post Office Square, Suite 100
Boston, MA 02109-3912
tel: (617) 918-1796
fax: (617) 918-0796
email: kopf.jeff@epa.gov