



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 27 2012

CERTIFIED MAIL 70113500000320640192
RETURN RECEIPT REQUESTED

The Honorable Edward R. Girdler
Mayor, City of Somerset
400 East Mt. Vernon Street
Somerset, Kentucky 42501
c/o Ms. Carrie D. Wiese, City Attorney

Re: Consent Agreement and Final Order
Docket No. CWA-04-2012-4529(b)

Dear Mayor Girdler:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order, finalized by the U.S. Environmental Protection Agency, Region 4 and the Regional Judicial Officer. Please make note that you have met all of the provisions under this Final Order. We acknowledge receipt of full payment in the amount of \$3,500.

Should you have any questions or concerns regarding this matter, please contact Mr. Michael Hom at (404) 562-9748 or via email at hom.michael@epa.gov.

Sincerely,

A handwritten signature in black ink that reads "Denisse Diaz".

Denisse D. Diaz, Chief
Clean Water Enforcement Branch
Water Protection Division

Enclosure

cc: Mr. Jeffrey A. Cummins
Director, Division of Enforcement
Kentucky Department for Environmental Protection

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:

**CITY OF SOMERSET
SOMERSET, KENTUCKY**

RESPONDENT

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

) **Docket No. CWA-04-2012-459(b)**
)
)
)

HEARING CLERK

2012 SEP 27 PM 1:10

RECEIVED
EPA REGION IV

CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(A) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(A), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, including Subpart I, published at 64 Fed. Reg. 40176 (July 23, 1999), and codified at 40 Code of Federal Regulations ("C.F.R.") Part 22.

2. The authority to take action under Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), is vested in the Administrator of the United States Environmental Protection Agency ("EPA"). The Administrator has delegated this authority to the Regional Administrator Region 4, who in turn has re-delegated this authority to the Director of the Water Protection Division, who in turn has delegated this authority to the Chief of the Clean Water Enforcement Branch of EPA Region 4 ("Complainant").

II. Allegations

3. At all times relevant to this action, the City of Somerset, Kentucky ("Respondent"), was a municipality duly organized and existing under the laws of the Commonwealth of Kentucky and, therefore, a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. §§ 503.9(o) and (q).

4. At all times relevant to this action, Respondent owned and operated a Publicly Owned Treatment Works ("POTW"), located at Highway 1247, Somerset, Kentucky, which has a design flow rate equal to or greater than one million gallons per day, serves 10,000 people or more or is a "Class I sludge management facility" as defined in 40 C.F.R. § 503.9(c).

5. Respondent is a "person who prepares sewage sludge" as defined in 40 C.F.R. § 503.9(r), as either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge, and is thus subject to the requirements of the CWA and 40 C.F.R. Part 503.

6. Section 405(e) of the CWA, 33 U.S.C. § 1345(e), makes it unlawful for any person to dispose of sewage sludge from a treatment works treating domestic sewage except in accordance with regulations promulgated pursuant to Section 405(d) of the CWA, 33 U.S.C. § 1345(d), which are found at 40 C.F.R. Part 503.

7. 40 C.F.R. Part 503 establishes standards for the use and disposal of sludge, and consists of general requirements, pollutant limits, management practices, operational standards, frequency of monitoring, recordkeeping, and reporting, for the final use or disposal of sewage sludge generated during the treatment of domestic sewage in a treatment works.

8. 40 C.F.R. § 503.18(a) requires Class I sludge management facilities, POTWs with a design flow rate equal to or greater than one million gallons per day and POTWs that serve 10,000 people or more to submit certain information to the permitting authority (EPA) on February 19th of each year. This information is hereinafter referred as the “annual sludge report.”

9. Respondent submitted the annual sludge report for calendar year 2011 on January 3, 2012.

10. Respondent reported that 107.08 dry metric tons of sewage sludge were land applied in calendar year 2011. Based on the amount disposed, Respondent was required to sample at the monitoring frequency as per 40 C.F.R. § 503.16.

11. In calendar year 2011, Respondent did not analyze for pathogen density as per 40 C.F.R. § 503.32(b)(2), nor provide operational parameters to demonstrate a process to significantly reduce pathogens as per 40 C.F.R. § 503.32(b)(3). Therefore, Respondent violated Section 405(e) of the CWA, 33 U.S.C. § 1345(e).

12. 40 C.F.R. § 503.15(c)(1) requires that “[o]ne of the vector attraction reduction (VAR) requirements in § 503.33 (b)(1) through (b)(10) shall be met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site.”

13. In calendar year 2011, Respondent failed to submit data to support any one of the VAR requirements. Therefore, Respondent violated Section 405(e) of the CWA, 33 U.S.C. § 1345(e).

III. Stipulations and Findings

14. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (“CA/FO”) will simultaneously commence and conclude this matter.

15. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out above and neither admits nor denies the factual allegations set out above.

16. By signing this CA/FO, Respondent certifies that the information it has supplied concerning this matter was, at the time of submission, and is, truthful, accurate, and complete for each such submission, response and statement. Respondent realizes that there are significant penalties for submitting false or misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information.

17. The EPA reserves the right to assess and collect any and all civil penalties for any violation described herein to the extent that any information or certification provided by Respondent was materially false or inaccurate at the time such information or certification was provided to the EPA.

18. Complainant and Respondent agree to settle this matter by their execution of this CA/FO. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of the CWA.

IV. Payment

19. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, the EPA has determined that Three Thousand Five Hundred Dollars (\$3,500) is an appropriate civil penalty to settle this action. Respondent consents to the assessment of and agrees to pay the civil penalty.

20. Respondent shall submit payment of the penalty specified in the preceding paragraph within thirty (30) days of the effective date of this CA/FO via a cashier's or certified check, payable to the order of "Treasurer, United States of America." The check shall reference on its face the name of Respondent and the Docket Number of this CA/FO. Such payment shall be tendered to:

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

21. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CA/FO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

and

Ms. Mary Mattox
U.S. Environmental Protection Agency, Region 4
Water Protection Division
Clean Water Enforcement Branch
Municipal and Industrial Enforcement Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

22. The penalty amount specified in Paragraph 19 above shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of federal taxes.

23. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by the Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject the Respondent to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CA/FO), attorneys 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 (20%) of the aggregate amount of such penalty and nonpayment penalty which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount and appropriateness of the penalty and of this CA/FO shall not be subject to review.

V. General Provisions

24. This CA/FO 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 determination of, any issue related to any federal, state, or local permit. Other than as expressed herein, compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by the EPA.

25. Nothing in this CA/FO shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Respondent's violation of this CA/FO or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any federal or state statute, regulation or permit.

26. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and Respondent of all claims for civil penalties pursuant to the CWA with respect to only those violations alleged in this CA/FO. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent, or other liability resulting from violations that were not alleged in this CA/FO. Other than as expressed herein, Complainant does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

27. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.

28. This CA/FO applies to and is binding upon Respondent and its officers, directors, employees, agents, successors and assigns.

29. Any change in the legal status of Respondent including, but not limited to, any transfer of assets of real or personal property, shall not alter Respondent's responsibilities under this CA/FO.

30. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CA/FO.

31. In accordance with 40 C.F.R. § 22.5, the individuals below are authorized to receive service relating to this proceeding.

For Complainant:

Mr. Wayne Lee
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9523

For Respondent:

Honorable Edward R. Girdler
Mayor
City of Somerset
400 East Mt. Vernon Street
Somerset, Kentucky 42501
(606) 679-6366

32. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a consent agreement and proposed final order based on comments received during the public comment period.


33. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the Commonwealth of Kentucky was provided a prior opportunity to consult with Complainant regarding this matter.

VI. Effective Date

34. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

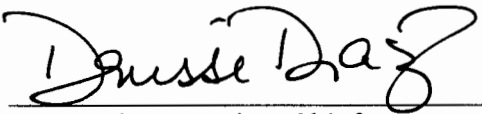
For RESPONDENT, CITY OF SOMERSET, KENTUCKY:



Honorable Edward R. Girdler
Mayor
City of Somerset

Date: 8/6/12

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:



Ms. Denisse D. Diaz, Chief
Clean Water Enforcement Branch
Water Protection Division
U.S. EPA, Region 4

Date: 9/27/12

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

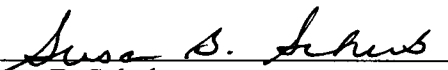
IN THE MATTER OF:)	
)	CONSENT AGREEMENT AND
CITY OF SOMERSET)	FINAL ORDER
SOMERSET, KENTUCKY)	
)	
RESPONDENT)	Docket No. CWA-04-2012-4529(b)
)	
_____)	

FINAL ORDER

In accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, including Subpart I, 40 C.F.R. Part 22, and authorities delegated to me, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9/27/2012


Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of the City of Somerset, Kentucky, Docket No. **CWA-04-2012-4529(b)** (filed with the Regional Hearing Clerk on **SEP 27 2012**)⁰¹² was served on **SEP 27 2012**, 2012, in the manner specified to each of the persons listed below.

By hand-delivery:

Wayne Lee
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

**By certified mail,
return receipt requested:**

Honorable Edward R. Girdler
Mayor
City of Somerset
400 East Mt. Vernon Street
Somerset, Kentucky 42501
c/o Ms. Carrie D. Wiese, City Attorney

Jeffrey A. Cummins, Director
Division of Enforcement
Kentucky Department for Environmental Protection
300 Fair Oaks Lane
Frankfort, Kentucky 40601



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9511

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM
=====

TO BE COMPLETE BY ORIGINATING OFFICE:

(attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Mary Mattox 8/24/12
[Name] [Date]
in the WPD/CWEB/Municipal and Industrial Section at 404-562-9733
[Office] [Telephone Number]

- | | |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree.
USAO COLLECTS. | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement.
FMS COLLECTS PAYMENT. |
| <input type="checkbox"/> SF Judicial Order/Consent Decree.
FMS COLLECTS. | <input type="checkbox"/> Other Receivables |
| <input type="checkbox"/> This is an original debt. | <input type="checkbox"/> This is a modification. |

PAYEE: City of Somerset, KY
[Name of person and/or Company/Municipality making the Payment]

The Total Dollar Amount of Receivable: \$ 3,500
[If in installments, attach schedule of amounts and respective due dates]

The Case Docket Number: CWA-04-2012-4529 (b)

The Site-Specific Superfund (SF) Account Number: _____

The Designated Regional/Headquarters Program Office: Region 4 Water Protection Division

=====

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT SECTION:

The IFMS Accounts Receivable Control Number is: _____
If you have any questions call: _____ in the Financial Management Section,
Telephone Number: _____

=====

DISTRIBUTION:

- A. JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the FINAL JUDICIAL ORDER should be mailed to:
- | | |
|--|---|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice/RH 1647
P.O. BOX 7611, Benjamin Franklin Station
Washington, DC 20044 | 2. Originating Office (ORC)
3. Designated Program Office |
|--|---|
- B. ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the ADMINISTRATIVE ORDER should be sent to:
- | | |
|--|---|
| 1. Originating Office
3. Regional Hearing Clerk | 2. Designated Program Office
4. Regional Counsel |
|--|---|

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM
PROGRAM SPECIFIC INFORMATION

Case Docket Control Number: CWA-04-2012-4529(b)

Total Amount Due: \$ 3,500

Full payment due within 30 days of the effective date of the CAFO.

Installment payments to be paid:

Amount Due:	Date Due:
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	_____