



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 02 2011

CERTIFIED MAIL 70101060000217027772
RETURN RECEIPT REQUESTED

Mr. McDuffie Cummings
Town Manager
Town of Pembroke
P.O. Box 866
Pembroke, North Carolina 28372

Re: Consent Agreement and Final Order
Docket No. CWA-04-2011-4516(b)

Dear Mr. Cummings:

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 \$900.

Should you have any questions or concerns regarding this matter, please contact Ms. Mary Mattox at (404) 562-9733.

Sincerely,

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

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

Enclosure

cc: Coleen H. Sullins, Director
North Carolina Department of Environment
and Natural Resources

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:

Town of Pembroke
Pembroke, North Carolina

Respondent

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

)
)
) **Docket No. CWA-04-2011-4516(b)**
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USEPA REGION 4
OFFICE OF ENVIRONMENTAL
ACCOUNTABILITY

Regional Hearing Clerk

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. The Administrator has delegated this authority to the Regional Administrator Region 4, who in turn has redelegated 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 Town of Pembroke, North Carolina ("Respondent"), was a municipality duly formed and existing under the laws of the State of North Carolina 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/or operated a Publicly Owned Treatment Works ("POTW"), the Pembroke Wastewater Treatment Plant, located at P.O. Box 866, Pembroke, North Carolina operating under National Pollutant Discharge Elimination System ("NPDES") Permit Number NC0027103. The POTW 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) and is a "treatment works" as defined in 40 C.F.R § 503.9(aa).

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 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, and management practices, operational standards, 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. Part 503 applies to any person who prepares sewage sludge and to any person who applies sewage sludge to the land. See 40 C.F.R. § 503.1(b). The land application requirements found at 40 C.F.R. Part 503 Subpart B apply to any person who prepares sewage sludge that is applied to the land and to any person who applies sewage sludge to the land. See 40 C.F.R. § 503.10(a).

9. 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.”

10. Respondent submitted the annual sludge report for calendar year 2010 on April 26, 2011. The 2010 annual sludge report indicated that Respondent land applied approximately 181.89 dry metric tons of sewage sludge during the calendar year.

III. Stipulations and Findings

11. 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.

12. Respondent is a “person who prepares sewage sludge” as defined in 40 C.F.R. § 503.9(r) and is subject to the requirements of the CWA and 40 C.F.R. Part 503.

13. Respondent is the owner of a POTW with a design flow rate equal to or greater than one million gallons per day, or that serves 10,000 people or more, or is a Class I sludge management facility which is required to submit an annual sludge report on February 19th of each year pursuant to 40 C.F.R. § 503.18.

14. Respondent violated Section 405(e) of the CWA, 33 U.S.C. § 1345(e), by failing to timely submit an annual sludge report to EPA in accordance with 40 C.F.R. § 503.18.

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. Respondent hereby waives its right to contest the allegations set out above and its right to appeal the Final Order accompanying this Consent Agreement.

17. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CA/FO and consents to the other conditions set forth in this CA/FO.

18. 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.

19. Complainant 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 EPA.

20. 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

21. 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, EPA has determined that Nine Hundred Dollars (\$900.00) is an appropriate civil penalty to settle this action.

22. 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

23. 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

24. The penalty amount specified in Paragraph 21 above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes.

25. 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 per cent (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

26. 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.

27. 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.

28. 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.

29. 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.

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

31. 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.

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

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

For Complainant:

Ms. Suzanne Rubini
Chief, Office of Water Legal Support
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9674

For Respondent:

Mr. McDuffie Cummings
Town Manager
Town of Pembroke
P.O. Box 866
Pembroke, North Carolina 28372

34. 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.

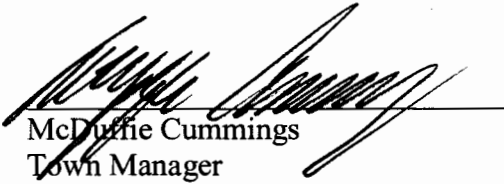
35. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of North Carolina was provided a prior opportunity to consult with Complainant regarding this matter.

VI. Effective Date

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

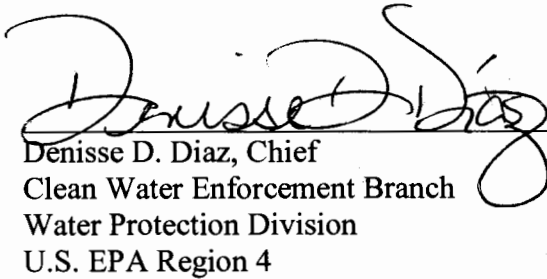
AGREED AND CONSENTED TO:

For RESPONDENT, CITY OF PEMBROKE, NORTH CAROLINA:


McDuffie Cummings
Town Manager

Date: 7/13/11

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:


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

Date: 8/30/11


CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of Town of Pembroke, North Carolina, **Docket No. CWA-04-2011-4516(b)** (filed with the Regional Hearing Clerk on September 2, 2011) was served on September 2, 2011, in the manner specified to each of the persons listed below.

By hand-delivery: Ms. Suzanne Rubini, Chief
Office of Water Legal Support
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

**By certified mail,
return receipt requested:** Mr. McDuffie Cummings
Town Manager
Town of Pembroke
P.O. Box 866
Pembroke, North Carolina 28372

Ms. Coleen H. Sullins
Director, Division of Water Quality
North Carolina Department of Environment
and Natural Resources
1617 Mail Service Center
Raleigh, North Carolina 27699


Belinda Johnson, Acting 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