

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. Environmental Protection Agency  
2018 SEP 27 PM 2:11  
REGIONAL ADMINISTRATOR  
DIVISION OF ENFORCEMENT AND COMPLIANCE ASSISTANCE

**IN THE MATTER OF:**

City of Newburgh  
83 Broadway  
Newburgh, New York 12550

**SPDES Permit No. NYR20A240**

**Respondent**

Proceeding pursuant to Section 309(g) of the  
Clean Water Act, 33 U.S.C. §1319(g)

**CONSENT AGREEMENT  
AND FINAL ORDER**

**DOCKET No. CWA-02-2018-3303**

**I. PRELIMINARY STATEMENT**

1. This is a civil administrative proceeding for the assessment of a civil penalty instituted pursuant to Section 309(g) of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. §1319(g).
2. The following Findings of Fact are made and Order issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by the Act, 33 U.S.C. §1251 *et. seq.*, which authority has been duly delegated to the Regional Administrator of Region 2, EPA and since further re-delegated to the Director, Division of Enforcement and Compliance Assistance, Region 2, EPA.
3. EPA is initiating and concluding this proceeding for the assessment of a civil penalty, pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. §1319(g), and 40 C.F.R. §22.13(b) of 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” (“CROP”), which sets forth procedures for simultaneous commencement and conclusion of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order pursuant to 40 C.F.R. §§22.18(b)(2) and (3).

**II. FINDINGS OF FACT**

4. The City of Newburgh (“Respondent” or “City”) is a municipal corporation chartered under the laws of the State of New York, and as such, the Respondent is a person, as defined in Section 502(5) of the CWA, 33 U.S.C. §1362(5), and 40 C.F.R. §122.2, and is an “incorporated place” as defined in 40 C.F.R. §122.26(b)(3).

5. The Respondent owns and operates the MS4 located in the City of Newburgh, New York, and is an “owner or operator” within the meaning of 40 C.F.R. §122.2.
6. The MS4 in the City of Newburgh is a small MS4 located in a urbanized area within the meaning of 40 C.F.R. §122.26(b)(16)(ii) and 40 C.F.R. §122.32(a)(1).
7. The MS4 is a point source within the meaning of Section 502(14) of the CWA, 33 U.S.C. §1362(14).
8. The Respondent’s MS4 includes approximately sixty-nine (69) outfall pipes, which are “point sources” within the meaning of Section 502(14) of the CWA, 33 U.S.C. §1362(14), that discharge stormwater, which is a “pollutant” within the meaning of Section 502(6) of the CWA, 33 U.S.C. §1362(6), to Quassaick (or Quassaic) Creek, Muchattoes Lake, Gidneytown Creek and the Hudson River. Quassaick Creek is tributary to the traditionally navigable Muchattoes Lake. Quassaick Creek and Gidneytown Creek are tributary to the traditionally navigable Hudson River. Therefore, Quassaick Creek, Muchattoes Lake, Gidneytown Creek and Hudson River are waters of the United States within the meaning of 40 C.F.R. §122.2, and as such, discharge pollutants within the meaning of Section 502(12) of the CWA, 33 U.S.C. §1362(12).
9. The Respondent submitted a Notice of Intent (“NOI”) in March 2003 for coverage under the State Pollutant Discharge Elimination System (“SPDES”) General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems, SPDES Permit No. GP-02-02, which became effective January 8, 2003. The Respondent subsequently received coverage from New York State Department of Environmental Conservation (“NYSDEC”) under the SPDES General Permit (GP-02-02) (NYR20A240), which became effective January 8, 2003, and permit coverage was maintained under the subsequent SPDES permits, including the current, and administratively extended, SPDES permit which became effective on March 1, 2015 and expired on April 30, 2017.
10. The NYSDEC General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (GP-0-15-003), effective on May 1, 2015, was the effective permit at the time of the audit.
11. The EPA conducted a Compliance Audit of the Respondent’s MS4 on June 25, 2015, and determined that Respondent had failed to fully develop and implement their Stormwater Management Plan (“SWMP”), and had failed to comply with conditions of the NYSDEC General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems, in the operation of its MS4 located in Newburgh, New York, which resulted in, among other things, the discharge of stormwater pollution into waters of the United States in violation of Section 301 of the Act, 33 U.S.C. §1311.
12. Based on the Findings cited in Paragraphs 4-11 above, the Respondent violated Section 301 of the Act, 33 U.S.C. §1311.

### **III. CONCLUSIONS OF LAW AND JURISDICTION**

13. Section 301(a) of the Act, 33 U.S.C. §1311(a), provides, in part, that the discharge of any pollutants by any person from a point source to a navigable water of the United States shall be

unlawful except, inter alia, in accordance with the terms and conditions of a duly issued permit pursuant to Section 402 of the Act, 33 U.S.C. §1342.

14. Section 402 of the Act, 33 U.S.C. §1342, authorizes the Administrator of the EPA to issue a National Pollutant Discharge Elimination System (“NPDES”) permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the Act and conditions which the Administrator determines are necessary.
15. Pursuant to Section 402(b) of the Act, 33 U.S.C. §1342(b), the EPA granted authority to the New York State Department of Environmental Conservation to issue State Pollutant Discharge Elimination System permits to facilities in New York State for the discharge of pollutants from said facilities from a point source to a navigable water of the United States.
16. Section 402(p) of the CWA, 33 U.S.C. §1342(p) sets forth the requirements for discharges of stormwater.
17. NYSDEC issued a SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (GP-02-02) on January 8, 2003. The SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (“Permit”) expired on January 8, 2008, and was administratively extended until the Permit was reissued on April 15, 2008 as GP-08-02. The Permit was subsequently renewed on May 1, 2010 as GP-0-10-002, and expired on April 30, 2015. The Permit was then reissued as GP-0-15-003, as an interim general permit with only conforming changes, such as a new general permit identification number, a two (2) year term, and updated references to the SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-15-002) and Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (GP-0-12-001). That Permit expired on April 30, 2017, and has been administratively continued until such time as a new permit is issued.
18. The Administrator of the EPA has promulgated regulations at 40 C.F.R. §122.26(a)(9)(i)(A), which require operators to obtain a NPDES permit for discharges composed entirely of stormwater from a small MS4 required to be regulated pursuant to 40 C.F.R. §122.32.
19. Section 402 of the CWA, 33 U.S.C. §1342, authorizes the Administrator of the EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The NYSDEC is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402 of the CWA, 33 U.S.C. §1342. The EPA maintains concurrent enforcement authority with authorized States for addressing violations of the CWA. Additionally, under the authority granted to the NYSDEC by the EPA under Section 402(b) of the CWA, 33 U.S.C. §1342(b), facilities are required to obtain a SPDES permit from the NYSDEC for the discharge of pollutants from said facilities’ point source(s) to a navigable water of the United States.
20. The Respondent’s Facility is subject to the NPDES requirements pursuant to Section 402 of the Act, 33 U.S.C. §1342 and Section 301(a) of the Act, 33 U.S.C. §1311(a).
21. Based upon the Findings of Fact set forth above, the Respondent operated the Facility in violation of Sections 301 and 402 of the Act.

22. EPA has jurisdiction over the subject matter of this action, pursuant to Section 309 of the Act, 33 U.S.C. §1319, and over the Respondent.

**IV. CONSENT AGREEMENT**

23. Paragraphs 1 through 22, above, are re-alleged and incorporated herein by reference.

24. The EPA and the Respondent agree that it is in the public interest to resolve the issues alleged in this Consent Agreement without further litigation and the expense and effort that litigation entails.

25. Based upon the foregoing and pursuant to Section 309(g) of the Act, 33 U.S.C. §1319(g), and the CROP, it is hereby agreed by and between EPA and the Respondent, and the Respondent voluntarily and knowingly agrees as follows:

**V. TERMS OF SETTLEMENT**

26. For the purpose of this proceeding, the Respondent:

- a. Admits the jurisdictional allegations of this CA/FO;
- b. Neither admits or denies the factual allegations contained herein;
- c. Waives its right to contest the allegations, at a judicial or administrative hearing, or to appeal this CA/FO; and
- d. Consents to the payment of the civil penalty in the amount of Five Thousand One Hundred Dollars (\$5,100.00), as stated in Paragraph 27, below.

**VI. PAYMENT OF CIVIL PENALTY**

27. The Respondent shall pay a civil penalty in the amount of *Five Thousand One Hundred Dollars (\$5,100.00)* to the "Treasurer of the United States of America."

28. Payments can be made by debit/credit card, check, or electronically. Electronic payments fall into two categories: wires and Automated Clearinghouse (ACH). Wires are same day and more costly. ACH is the next day or any future scheduled day and is less expensive. Please note that wires and ACH payments must be conducted through the sender's bank. The checks (cashier's or certified checks only) shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Payment methods are described below:

Type of Payment	Payment Information
Debit and Credit Card Payments	<a href="https://www.pay.gov/paygov/">https://www.pay.gov/paygov/</a>
Checks from U.S. Banks	U.S. Postal Service UPS, Federal Express, or Overnight Mail

<b>Finance Center Contacts:</b> <b>Craig Steffen</b> <b>(513-487-2091)</b>	<b>Check Payments – Fines and Penalties</b>	<b>US Environmental Protection Agency Fines and Penalties Cincinnati Finance Center</b> <b>PO Box 979077</b> <b>St. Louis, MO 63197-9000</b>	<b>U.S. Bank Government Lockbox 979077</b> <b>US EPA Fines &amp; Penalties</b> <b>1005 Convention Plaza</b> <b>SL-MO-C2-GL</b> <b>St. Louis, MO 63101</b> <b>314-418-1028</b> <b>Contact: Natalie Pearson</b> <b>314-418-4087</b>
<b>Checks drawn on foreign banks with no USA branches (any currency)</b>	<b>Cincinnati Finance</b> <b>US EPA, MS-NWD</b> <b>26 W ML King Drive</b> <b>Cincinnati, OH 45268-0001</b>		
<b>Wire Transfers (any currency)</b>	<b>Federal Reserve Bank of New York</b> <b>ABA: 021030004</b> <b>Account Number: 68010727</b> <b>SWIFT address: FRNYUS33</b> <b>33 Liberty Street</b> <b>New York, NY 10045</b> <b>Field Tag 4200 of the Fedwire message should read:</b> <b>"D 68010727 Environmental Protection Agency"</b>		
<b>ACH - Automated Clearinghouse for receiving US currency Finance Center Contacts:</b>  <b>John Schmid</b> <b>(202-874-7026)</b>  <b>REX (Remittance Express)</b> <b>1-866-234-5681</b>	<b>US Treasury REX / Cashlink ACH Receiver</b> <b>ABA: 051036706</b> <b>Account Number: 310006, Environmental Protection Agency</b> <b>CTX Format Transaction Code 22 – checking</b>  <b>Physical location of US Treasury facility:</b> <b>5700 Rivertech Court</b> <b>Riverdale, MD 20737</b>		

**ON LINE PAYMENT:**

There is now an On Line Payment Option, available through the Department of Treasury. This payment option can be accessed from the information below: WWW.PAY.GOV. Enter sfo 1.1 in the search field. Open form and complete required fields.

The Respondent shall also send copies of this payment to each of the following:

Branch Chief  
Water Compliance Branch  
Division of Enforcement and Compliance Assistance  
U.S. EPA, Region 2  
290 Broadway, 20th Floor  
New York, New York 10007-1866

and

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th Floor  
New York, New York 10007

The payment must be received at the above address on or before thirty (30) calendar days after the date of receipt of this Order (the date by which payment must be received shall hereafter be referred to as the "due date").

29. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for Collection.
30. Further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. §3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.
31. In addition, pursuant to Section 309(g)(9) of the Act, 33 U.S.C. §1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties, which are unpaid as of the beginning of such quarter. You also may be required to pay attorney's fees and costs for collection proceedings in connection with nonpayment.
32. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondent's federal or New York State taxes.

## **VII. GENERAL PROVISIONS**

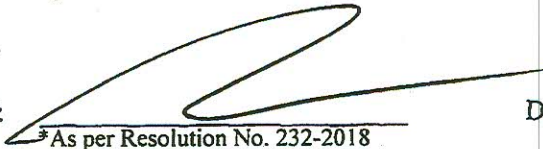
33. Upon execution by the parties, this Agreement shall be subject to a public comment period of not less than thirty (30) days, pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. §1319(g)(4)(A) and 40 C.F.R. §22.45. The EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations indicating that the Agreement is inappropriate, improper, or inadequate.
34. If comments during the public comment period do not require modification or withdrawal by the EPA from this Agreement, the parties agree to submit this Agreement to the Director of the Division of Enforcement and Compliance Assistance ten (10) days after closure of the public comment period, with a request that it be incorporated into a final order.
35. The provisions of this CA/FO shall be binding upon the Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns, including but not limited

to, subsequent purchasers. No transfer of ownership or operation shall relieve the Respondent of its obligation to comply with this CA/FO.

36. The Respondent waives any right it may have pursuant to 40 C.F.R. §22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Director or the Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.
37. Except for the specific violations alleged herein, nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of the EPA to seek any other remedies or sanctions available by virtue of the Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.
38. This CA/FO shall not relieve the 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.
39. This CA/FO constitutes a settlement by the EPA of all claims for civil penalties pursuant to the CWA for the violations by the Respondent alleged herein. 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. 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, and it is the responsibility of the Respondent to comply with such laws and regulations.
40. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
41. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CA/FO.

*For the Respondent: City of Newburgh hereby consents to the issuance of the ORDER and agrees to be bound thereby.*

BY:



As per Resolution No. 232-2018

Michael G. Ciaravino, City Manager  
City of Newburgh  
83 Broadway  
Newburgh, New York 12550

DATE:

8-15-18

*For the Complainant, the United States Environmental Protection Agency*

BY:

  
\_\_\_\_\_  
**Dore LaPosta, Director**

Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, New York 10007

DATE:

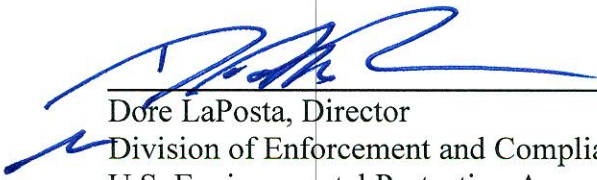
9/26/18



**VIII. FINAL ORDER**

The Regional Administrator of the United States Environmental Protection Agency, Region 2, vested by authority delegated by the Administrator of the United States Environmental Protection Agency ("EPA") and having further re-delegated such authority to the Division of Enforcement and Compliance Assistance, Region 2, EPA, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.

DATED: 9/24/18



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Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, New York 10007-1866

bcc: D. McKenna, DECA/WCB (WCB File)  
J. Modigliani, DECA/WCB (SharePoint)  
C. Arvizu, DECA/WCB  
P. Feinmark, ORC/WGLB

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UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 Broadway  
New York, New York 10007-1866

IN THE MATTER OF:

City of Newburgh  
83 Broadway  
Newburgh, New York 12550

**SPDES Permit No. NYR20A240**

**Respondent**

Proceeding Pursuant to Section 309(g) of the  
Clean Water Act, 33 U.S.C. §1319(g)

**CONSENT AGREEMENT AND  
FINAL ORDER**

**DOCKET No. CWA-02-2018-3303**

**CERTIFICATE OF SERVICE**

I certify that, on the date noted below, I caused to be mailed, by certified mail, return receipt requested, a copy of this "**Consent Agreement and Final Order**" to the following person at the address listed below:

Mr. Michael G. Ciaravino  
City Manager  
83 Broadway  
Newburgh, New York 12550

I [hand carried / mailed] the original and a copy of this "**Consent Agreement and Final Order**" to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Date: SEP 26 2018  
New York, New York

  
Marie St. Germain, Branch Secretary