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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

-----X
In the Matter of: :
: :
Town of North Hempstead, :
: :
Respondent. : CONSENT AGREEMENT
: AND
: FINAL ORDER
: :
Proceeding Under Section : Docket No. RCRA-02-2018-7501
9006 of the Solid Waste :
Disposal Act, as amended. :
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PRELIMINARY STATEMENT

This administrative proceeding was instituted pursuant to Section 9006 of the Solid Waste Disposal Act, as amended by various laws including the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments of 1984 (“HSWA”), 42 U.S.C. § 6901 *et seq.* (collectively referred to as “RCRA” or the “Act”).

The Complainant in this proceeding is the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency Region 2 (“EPA”), who has been duly delegated the authority to institute and carry forward this proceeding. The Respondent is the Town of North Hempstead, a municipal corporation duly organized and validly existing under the laws of the State of the New York and is the “owner” and “operator” of “underground storage tanks” (“USTs”) or “UST Systems” as those terms are defined in Section 9001 of the Act, 42 U.S.C. § 6991, and 40 C.F.R. § 280.12, with executive offices located at Town Hall, 220 Plandome Road, Manhasset, New York 11030 at times relevant to this action. Pursuant to 40 Code of Federal Regulations (“C.F.R.”) § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a Complaint, a proceeding may simultaneously be commenced and concluded by the issuance of a Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. § 22.18.

The Complainant and Respondent agree that settling this matter by entering into this CA/FO pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) is an appropriate means of resolving this matter without further litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is the Town of North Hempstead, a municipal corporation duly organized and validly existing under the laws of the State of New York (hereinafter “Respondent” or “North Hempstead” or “TNH”).

2. Respondent is a "person" as that term is defined in Section 9001(6) of RCRA, 42 U.S.C. § 6991(6), and 40 C.F.R. § 280.12.

3. Respondent was and continues to be an "owner" and an "operator" of multiple "underground storage tanks" ("UST") or "UST systems" as those terms are defined in Section 9001 of the Act, 42 U.S.C. § 6991, and 40 C.F.R. § 280.12.

4. Respondent's UST systems are or were located at the following addresses (hereinafter the "Facilities" or separately "Facility"):

- a) Highway Department, Shore Road Yard, 700 West Shore Road, Port Washington, NY 11050
- b) Highway Department, 285 Denton Avenue, New Hyde Park, NY 11040
- c) Albertson Highway Shop, 1 Highway Yard, Albertson, NY 11507
- d) Solid Waste Management Authority, 802 West Shore Road, Port Washington, NY 11059
- e) Harbor Links Golf Course, 1 West Fairway Drive, Port Washington, NY 11050.

5. Pursuant to Section 9005 of the Act, 42 U.S.C. § 6991d, an authorized representative of the EPA inspected Respondent's UST systems located at the Facilities, specified above, between April 26, 2012 and April 3, 2013, in order to determine Respondent's compliance with the Act and 40 C.F.R. Part 280. Each Facility was inspected twice.

6. EPA sent a RCRA § 9005 Notice of Violation/Information Request Letter ("NOV/IRL") dated June 6, 2012 to TNH in order to determine TNH's compliance with the requirements of the Act and 40 C.F.R. Part 280 pertaining to USTs at Highway Department, Shore Road Yard, 700 West Shore Road, Port Washington facility.

7. Respondent submitted a response dated July 6, 2012 to the aforementioned NOV/IRL referred to in paragraph number 6, above.

8. In a letter dated July 11, 2013 EPA issued a "Pre-filing Settlement Opportunity for Prospective Civil Enforcement Action Concerning Violations of Underground Storage Tanks" which included a list of potential violations of the UST regulations at various TNH Facilities and an offer to discuss the alleged violations prior to filing of a Complaint.

9. In a letter dated September 11, 2013 TNH responded to EPA's July 11, 2013 letter. In a letter dated August 29, 2014, TNH submitted a supplemental response. These responses identified a broader universe of compliance issues.

10. On November 19, 2015 EPA and TNH met at the EPA offices in New York City to discuss compliance issues and settlement.

11. In a letter dated December 3, 2015, TNH submitted a "Compliance Plan and Timeline" for the USTs at the Facilities.

12. In a letter dated May 25, 2016, TNH submitted an "update" on its Compliance Plan

and Timeline previously submitted on December 3, 2015.

13. Since the May 25, 2016 update, the parties have been reviewing the details and discussing the eligibility of various Supplemental Environmental Projects to be included in a settlement.

14. After a review of the information obtained through the inspections, Respondent's response to the IRL and other documents the TNH later submitted to EPA as set forth in the paragraphs above, EPA determined that there were violations at UST systems at four of the Facilities specified in paragraph 4, above as follows:

Failure to permanently close a temporarily closed UST after 12 months in violation of 40 C.F.R. § 280.70(c) at the Shore Road Yard, 700 West Shore Road (Sept. 2011-Sept. 2013);

Failure to monitor tanks for releases every 30 days in violation of 40 C.F.R. § 280.41(a) at Highway Department, 285 Denton Avenue, New Hyde Park (Sept. 2011-Nov. 2015) and at the Harbor Links Golf Course (Oct. 2011-Mar. 2016);

Failure to conduct a line tightness test every 3 years in violation of 40 C.F.R. § 280.41(b)(2) at the Solid Waste Management Authority, 802 W. Shore Road, Port Washington (Oct. 2011-Oct. 2013) and at the Harbor Links Golf Course (Oct. 2011-Oct. 2012).

15. As part of the settlement, Respondent conducted a site assessment, pursuant to 40 C.F.R. § 280.72, where two USTs were removed in October of 2013 at Highway Department, Shore Road Yard, 700 West Shore Road, Port Washington, NY 11050. Documentation on the site assessment was submitted September 27, 2016.

16. As part of the settlement, Respondent installed an Omntec underground storage tank release detection system at the Harbor Links facility and submitted documentation supporting the installation on August 18, 2017.

17. The parties have agreed to resolve this matter as herein provided.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 9006 of the Act, 42 U.S.C. § 6991e, and Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. § 22.18, it is hereby agreed that:

1. For purposes of this proceeding, Respondent (a) admits the jurisdictional basis of this action; (b) consents to the conditions specified in the Consent Agreement; and (c) consents to the issuance of the Final Order.

2. Respondent will maintain compliance with all applicable requirements of 40 C.F.R. Part 280 for each federally regulated UST system at any of its facilities where it is an owner and/or operator of an UST system.

3. Respondent shall include the following certifications in any submission to EPA:

I certify that the information contained in this submittal is true, accurate and complete to the best of my knowledge and belief. As to the identified portions of this response for which I am unable personally to verify their truthfulness, accuracy and/or completeness, I certify that this response and all accompanying supporting documentation were prepared in accordance with a system designed to assure that qualified personnel gather and evaluate the information submitted. I am aware that there are significant potential penalties for submitting false and misleading information, and such penalties might include criminal fines and imprisonment for knowing violations.

Signature: _____

Name: _____

Title: _____

Date: _____

All submissions by Respondent should be sent to:

Claudia Gutierrez
Team Leader
UST Team
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway, 20th Floor
New York, NY 10007-1866

4. Respondent shall pay a civil penalty to EPA in the total amount of **Forty Nine Thousand Five Hundred Dollars (\$49,500.00)**. Payment of the civil penalty shall be made by cashier's or certified check or by Electronic Funds Transfer ("EFT"). If the payment is made by check, then the check shall be made payable to the "**Treasurer, United States of America**" and shall be mailed to:

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

The check shall be identified with a notation thereon listing **In the Matter of the Town of North Hempstead, Docket No. RCRA-02-2018-7501**. If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency."
- 6) Name of Respondent: **In the Matter of the Town of North Hempstead**
- 7) Case Number: **RCRA-02-2018-7501**

Whether the payment is made by check or EFT, Respondent shall promptly thereafter furnish reasonable proof that such payment has been made to :

Stuart N. Keith
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, N.Y. 10007-1866

- a. The payment must be received at the above address on or before thirty (30) calendar days after the date of signature of the Final Order at the end of this document (the "due date").
- b. Failure to pay the penalty in full according to the above provisions may result in referral of this matter to the United States Department of Justice or the United States Department of Treasury for collection or other appropriate action.
- c. Further, if timely payment is not received on or before its due date, interest will be assessed at the annual rate established by the Secretary of the 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 fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid.
- d. A 6% per annum penalty will be applied on any principal amount not paid within 90 days of the due date

SUPPLEMENTAL ENVIRONMENTAL PROJECTS

5. Respondent shall implement two Supplemental Environmental Projects (SEPs) as set forth below.

Centralized Monitoring System

6. This SEP requires the installation of a Centralized Monitoring System for all UST and Above-Ground Storage Tank (AST) systems at five (5) facilities owned and/or operated by Respondent located at Highway Department, 285 Denton Avenue, New Hyde Park, NY 11040; Albertson Highway Shop, 1 Highway Yard, Albertson, NY 11507; Solid Waste Management Authority, 802 West Shore Road, Port Washington, NY 11059; Harbor Links Golf Course, 1 West Fairway Drive, Port Washington, NY 11050 and the Westbury Yard, 970 Brush Hollow Road, Westbury NY. Respondent shall implement this SEP in accordance with all provisions of this CA/FO. Respondent shall complete installation of the centralized monitoring systems at these locations by no later than eighteen (18) months after the Effective Date set forth in Paragraph 49 below. The SEP requires the installation of any and all communication components (*e.g.*, modems, wiring) necessary to insure the commencement of operation of centralized monitoring of all UST and AST systems at the specified locations within eighteen (18) months of the Effective Date. The centralized monitoring system shall collect data generated by the release detection monitoring systems and electronically transmit the data to a designated central monitoring location(s).

7. The Centralized Monitoring System shall record and maintain alarm data as well as system testing data at a centralized location. The UST systems shall be configured for remote monitoring by TNH's central data monitoring system. All alarms and testing data shall be transmitted to the data center and retained at a data center or other central location (which shall have the ability to access electronic records stored elsewhere on remote servers) for a period of at least five (5) years. If an alarm is reported, TNH or a contractor acting on Respondent's behalf, shall initiate contact of the personnel responsible for addressing the alarm condition and conducting any necessary response, repair, and/or investigation work.

8. The deadline for completion of installation of the equipment required for this SEP is eighteen (18) months after the Effective Date.

9. As part of this SEP, Respondent shall operate and maintain in good working condition the centralized monitoring equipment for all UST systems at the five locations for a minimum of five (5) years from the date that the centralized monitoring system is installed and fully operating at these locations (*i.e.*, gathering and disseminating data to a central location) pursuant to this Section. This five-year period shall start to run on the same day for all Centralized Monitoring System facilities starting no later than eighteen (18) months after the Effective Date.

Infiltration Basin

10. This SEP requires Respondent to incorporate green infrastructure at the Harbor Links Executive Course by constructing a infiltration basin to be located at the east portion of the existing parking lot. The infiltration basin will be approximately 1/20 acre and will provide pre-treatment of stormwater runoff for the existing parking lot which covers approximately ¾ acre. The infiltration basin improvements include the removal of existing grasses, soil

amendments, landscaping, and grading to provide a shallow depression to accommodate temporary stormwater detention and infiltration. Additional improvements to facilitate conveyance included modification of the existing pavement/curb and overflow piping. The infiltration basin shall comply with applicable Municipal Separate Storm Sewer System (“MS4”) Permit requirements and shall be designed in accordance with the New York State Department of Conservation Stormwater Management Design Manual and Specification Manual. (The infiltration basin SEP and costs were set forth in documents submitted to EPA by Respondent via email on October 5, 2017 including a submission by Cameron Engineering & Associates, LLP dated September 6, 2017 and a preliminary project engineering cost estimate dated October 2, 2017 which was updated on December 1, 2017). The deadline for completion of this SEP is twenty-four (24) months after the Effective Date. (This SEP shall hereinafter be referred to as the “infiltration basin SEP”).

General

11. Respondent is responsible for the satisfactory completion of the SEPs in accordance with the requirements of this CA/FO. Respondent may use contractors or consultants in planning and implementing the SEPs.

12. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEPs under this CA/FO shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action, *In the Matter of the Town of North Hempstead*, taken on behalf of the U.S. Environmental Protection Agency under the Solid Waste Disposal Act as amended”

13. Respondent shall not use or expend any money received from the state or federal governments, as a grant or otherwise, to directly finance, implement or perform any aspect or portion of the aforementioned SEPs.

Schedule and Reports

14. Respondent shall begin the implementation of the SEPs within sixty (60) days of the Effective Date of this CA/FO.

15. Respondent agrees that failure to carry out the SEPs shall constitute a violation of this CA/FO and stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 33 below.

16. The SEPs will be considered completed upon EPA’s acceptance of the SEP Completion Reports as described in Paragraph 21 below.

17. Interim Reports. Respondent shall submit five SEP reports for the Centralized Monitoring System SEP and one interim report (if required) for the infiltration basin SEP (all reports to be certified by an appropriate corporate official) as follows:

- a. An Installation Completion Report documenting the installation of the system shall be submitted within sixty (60) days of the completion of the installation and the commencement of operation of the Centralized Monitoring System (“first use date”) which shall include a detailed description of the installation of the system; a description of any problems encountered and the solutions which were applied; an itemized list of eligible SEPs costs that were incurred; certification that the SEPs have been fully installed in accordance with this CA/FO; and a description of the environmental and public health benefits expected to result from implementation of the SEPs (with a quantification of the benefits and pollutant reductions, if feasible);
- b. an annual interim operation report documenting the operation and maintenance of the Centralized Monitoring System shall be submitted for each of the first four years within sixty (60) days of the yearly anniversary of the first use date of the SEP;
- c. Respondent shall submit an interim SEP report for the infiltration basin SEP within sixty (60) days after one year anniversary of the commencement of installation unless the project is completed beforehand and in such case Respondent shall submit only a SEP Completion Report for the infiltration basin SEP. The information to be contained in the interim SEP report is the information required under paragraph 18 (b) and (e).

18. Respondent shall submit a SEP Completion Report on the Centralized Monitoring System SEP certified by an appropriate corporate official within sixty (60) days of the fifth anniversary of the first use date of the centralized monitoring system. Respondent shall submit a SEP Completion Report on the infiltration basin SEP certified by an appropriate corporate official within sixty (60) days of the completion of the project. Unless otherwise agreed, Respondent shall provide the following information in each SEP Completion Report:

- a. evidence of SEP completion, which may include but is not limited to, photos of the equipment, any contractor invoices or receipts, and correspondence to and from the contractor;
- b. a detailed description of the SEP as implemented;
- c. itemized total costs incurred which Respondent feels are eligible for SEP credit accompanied by copies of invoices, purchase orders, cancelled checks, receipts and/or other documentation that specifically identifies and itemizes the individual cost of the goods and services for which payment was made (as previously discussed, expenses for the Centralized Monitoring System that are specific to the purchase of ATGs or tank upgrade are not eligible for SEP credit);

- d. any savings accrued by the Respondent as a result of its implementation of the SEP;
- e. identification of any issues or problems that have arisen in connection with Respondent's implementation of the SEP or any of its components, and discussion of how any such issues or problems were addressed, and the solutions thereto;
- f. quantification to the extent possible of the benefits associated with the project and a statement setting forth how the benefits were measured or estimated;
- g. if any of the above items have been previously submitted, Respondent shall indicate this and reference the date of submittal; and
- h. the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant potential penalties for submitting false information, including the possibility of fines and imprisonment.

Respondent agrees that submission of a false and/or inaccurate report shall constitute a violation of this CA/FO and stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 33 below.

19. Respondent agrees that failure to submit a report required by this Consent Agreement in a timely manner shall constitute a violation of this CA/FO and stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 33 below.

20. EPA may grant an extension of the date(s) of performance or such other dates as are established in this CA/FO with regard to a SEP if Respondent has first demonstrated in writing good cause for such extension. If Respondent submits a request for extension, such request shall be accompanied by supporting documentation and be submitted to EPA no later than seven days prior to any due date set forth in this Consent Agreement, or other deadline established pursuant to this Consent Agreement. EPA may grant such extension in its discretion, and any such extension (or denial thereof) shall be in writing.

21. Following its receipt of a SEP Completion Report, EPA will notify Respondent in writing that it:

- a. accepts the SEP Completion Report; or
- b. rejects the SEP Completion Report, with identification of any questions it has and/or deficiencies in the report, including, but not limited to, a determination by EPA that certain expenditures are not creditable. EPA will grant Respondent an additional short period of time, which shall be reasonable under the then-existing circumstances (thirty (30) days at a minimum), in which to answer EPA's inquiries and/or to correct any deficiencies in the SEP Completion Report, and to resubmit an amended report if required. Such submission, provided it is timely, shall not be subject to stipulated penalties; or
- c. rejects the SEP Completion Report because EPA concludes that: (1) the Respondent has not made a good faith effort to complete the SEP or (2) the implementation of the SEP is flawed and cannot be remedied at this late stage.

22. If EPA notifies Respondent of its rejection of a SEP Completion Report pursuant to Paragraph 21 above, EPA shall permit Respondent the opportunity to object in writing to the rejection notification within fourteen (14) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the due date of Respondent's notification of objection to reach agreement. If agreement cannot be reached within this 30-day period, EPA shall provide a written statement of its decision to Respondent, which decision shall be final and binding upon Respondent.

23. The determination of whether a SEP has been satisfactorily completed, whether Respondent has made a good faith, timely effort to implement the SEP, whether Respondent has complied with all the terms of the CA/FO, and whether costs are creditable to the SEP shall be in the sole discretion of EPA.

24. Respondent agrees that submission of an untimely or unacceptable SEP Completion Report shall constitute a violation of this CA/FO and stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 33 below.

25. Delays:

- a. If any unforeseen event occurs which causes or may cause delays in the implementation of a SEP or the submission of a report as required herein, Respondent shall notify EPA in writing within (14) days of the delay, if possible, or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of delay, the precise cause of delay, the measures taken by Respondent to prevent or minimize delay, and any proposed adjustments to the timetable for

the implementation of a SEP or the submission of a required report caused by the delay. Respondent shall adopt all reasonable measures to avoid or minimize any such delay.

- b. If the parties agree that the delay or anticipated delay in the implementation of a SEP or the submission of a report has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances.
- c. In the event that EPA does not agree that a delay in implementing a SEP or submitting the report has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision and any delays in completion of a SEP shall not be excused.
- d. The burden of proving that any delay is caused by circumstances entirely beyond the control of Respondent shall rest with Respondent. Increased cost or expenses associated with the implementation of a SEP shall not, in any event, be a basis for changes in this Consent Agreement or extensions of time under section "b" of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

26. Respondent shall maintain in no more than three locations which are made known to EPA legible copies of documentation concerning the development, implementation, and financing of its SEPs and documentation supporting information in any report submitted to EPA pursuant to this CA/FO. Respondent shall grant EPA access to such documentation and shall provide copies of such documentation to EPA within fourteen (14) days of Respondent's receipt of a request by EPA for such information or within such additional time as approved by EPA in writing. Respondent shall also allow EPA to conduct, during normal business hours, an inspection, upon notice and request, of the locations where SEPs are being conducted to verify the implementation of the SEPs. The provisions of this paragraph shall remain in effect for seven (7) years from the Effective Date of this Consent Agreement.

27. All documents submitted to EPA shall be in a form mutually agreeable to both parties (*e.g.* by electronic mail in Microsoft Word or Portable Document Format [.pdf] format).

Certifications

28. Respondent hereby certifies that, as of the date of its signature on this Consent Agreement, that:

- a. all cost information provided to the EPA in connection with the EPA's approval of the SEPs is complete and accurate and Respondent in good faith estimates that the cost to implement the SEPs (including the cost of the communication components mentioned in paragraph 6 and the cost of operation and maintenance of the centralized monitoring systems for five years) is at least \$30,000.00 for the Centralized Monitoring System SEP and at least \$50,000 for the infiltration basin SEP, including the engineering fee;
- b. Respondent is not required to perform or develop the aforementioned SEPs pursuant to any federal, state or local law, regulation or other requirement;
- c. Respondent is not required to perform or develop the SEPs as set forth herein by any agreement, grant, or as injunctive relief awarded in any forum;
- d. the SEPs are not projects that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved herein;
- e. Respondent has not received and will not receive credit in any other enforcement action for the actions that constitute the SEPs; and
- f. Respondent will not receive reimbursement for any portion of the SEPs from any person or entity.

29. Respondent certifies that it is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEPs described herein. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could fund the same activity as the SEPs, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purpose of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally- guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

30. Respondent further certifies that it has not and agrees that it will not capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEPs for federal income tax purposes.

31. If within one year of receiving the certifications described above, EPA believes that any of the information certified to herein is inaccurate, EPA will so advise the Respondent of its belief and its basis, and will afford Respondent an opportunity to submit comments to EPA. After review of any comments submitted, EPA shall provide a written statement of its decision to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees that a false certification shall constitute a violation of this CA/FO and stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 33 below. Such payment(s) shall not preclude EPA from initiating a separate criminal investigation pursuant to 18 U.S.C. § 1001 et seq., or any other applicable law.

32. Nothing in this document is intended or construed to waive, prejudice or otherwise affect the right of EPA, or the United States, from pursuing any appropriate remedy, sanction or penalty prescribed by law against Respondent, if Respondent makes any material misrepresentations or provides materially false information herein or in any document submitted pursuant to this Consent Agreement.

Stipulated Penalties

33. Respondent agrees to pay stipulated penalties for the failure to comply with the terms of Paragraphs 1-32 above, in the same manner as specified in the Consent Agreement Section Paragraph 4 above, in the following amounts:

- a. If EPA determines that the Respondent has halted or abandoned work on the Centralized Monitoring System SEP and Respondent has not purchased, installed and operated such system for at least five years, the Respondent shall pay a stipulated penalty of fifty thousand (\$50,000.00) dollars. If EPA determines that the Respondent has halted or abandoned work on the infiltration basin SEP and Respondent has not purchased or installed the infiltration basin SEP, the Respondent shall pay a stipulated penalty of forty thousand (\$40,000.00) dollars. The stipulated penalties due under paragraph 33.a. need not be paid until EPA has provided notice to the Respondent of the alleged violation and the basis for such determination and has allowed the Respondent a short period (reasonable under the circumstances, but in no case less than thirty (30) days) to cure.
- b. If EPA believes that Respondent has made a good faith effort to complete the Centralized Monitoring System SEP but that it has not, within six years after the Effective Date, incurred creditable expenditures of at least 90% of the estimated expenditure amount of \$30,000.00 on the SEP, then EPA shall promptly advise Respondent of its belief and the basis for its belief and shall afford Respondent an opportunity to respond to EPA within twenty (20) days of EPA's notification. If, after considering Respondent's Reply, EPA determines that an amount less than \$27,000.00 was spent by Respondent, then within thirty (30) days of receipt of EPA's determination, Respondent shall operate the centralized monitoring system for such additional time as required to have the creditable expenditures be more than 100% of the estimated expenditure amount. If EPA believes that Respondent has made a good faith effort to complete the infiltration basin SEP but that it has not, within two years after the Effective Date, incurred creditable expenditures of at least 90% of the estimated expenditure amount of \$50,000.00 on the SEP, then EPA shall promptly advise Respondent of its belief and the basis for its belief and shall afford Respondent an opportunity to respond to EPA within twenty (20) days of EPA's notification. If, after considering Respondent's Reply, EPA determines that an amount less than \$45,000.00 was spent by Respondent, then within thirty (30) days of receipt of EPA's determination, Respondent shall pay an additional stipulated penalty in an amount that represents the difference between the EPA-approved creditable expenses and \$50,000.

- c. In the event that Respondent fails to timely submit a required report or submits an unacceptable SEP Completion Report, stipulated penalties shall accrue on a per day basis. For any such violation Respondent shall pay a stipulated penalty in the amount of \$100 per day for the first ten days, \$250 per day for days 11-30, and \$500 per day after day 30. If a report is submitted late or not at all, then such penalties shall begin to accrue on the day after the report is due and shall continue to accrue until a report is submitted. If the failure to timely submit a required report is the first such failure, then no stipulated penalty shall accrue for such failure until EPA has provided the Respondent notice (verbal or written) of such failure and an opportunity to cure.
- d. If EPA, acting in accordance with Paragraph 21 above, rejects a SEP Completion Report, then Respondent shall for that report pay a stipulated penalty of twenty thousand (\$20,000.00) dollars within thirty (30) days of receipt of EPA's final written determination, in addition to any other stipulated penalties due under this paragraph.
- e. If at any time, EPA believes that any of the information in Paragraphs 17-32, above, was inaccurately certified or if after reviewing a submitted report EPA believes that any information therein was inaccurately certified, EPA shall promptly advise Respondent of its belief and the basis for its belief and shall afford Respondent an opportunity to respond to EPA within twenty (20) days of EPA's notification. If, after considering Respondent's reply, EPA determines that a certification was materially inaccurate, then within thirty (30) days of receipt of EPA's determination Respondent shall pay a penalty of forty thousand (\$40,000.00) Dollars for the Centralized Monitoring System SEP and forty thousand (\$40,000) Dollars for the infiltration basin SEP.

34. The Complainant, may, in her sole discretion, reduce or waive any stipulated penalty otherwise due under this Consent Agreement.

35. Failure of Respondent to pay any stipulated penalty due and owing pursuant to this Consent Agreement may result in referral of this matter to the United States Department of Justice or the Department of the Treasury for collection.

36. Respondent agrees that EPA may contact any contractor retained by Respondent, for the sole purpose of confirming the SEPs implementation, at any time in order to confirm details about the SEPs or their costs. The provisions of this paragraph shall remain in effect from the Effective Date of this CA/FO until one (1) year after EPA acceptance of the second SEP Completion Report.

37. Non-Exclusivity of Remedy. Stipulated penalties are not the EPA's exclusive remedy for violations of this CA/FO. The EPA expressly reserves the right to seek any other relief it deems appropriate for Respondent's violation of this CA/FO or applicable law, including but not limited to an action against Respondent for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory

penalty assessed for a violation of this CA/FO shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this CA/FO.

38. 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.

39. This CA/FO is being voluntarily and knowingly entered into by the parties. Full payment of the penalty described in paragraph 4 above shall only resolve Respondent's liability for federal civil penalties for the violations and facts described in paragraphs 1-16 of the "Findings of Fact and Conclusions of Law". Full payment of this penalty shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

40. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its issuance and terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all the terms of settlement are set forth herein.

41. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

42. By executing this Consent Agreement, Respondent explicitly waives its right to request or to seek any Hearing on the Complaint or on any of the allegations asserted therein, on this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.

43. By executing this Consent Agreement, Respondent waives its right to appeal the proposed Final Order accompanying the Consent Agreement.

44. This CA/FO and any provision herein shall not be construed as an admission of liability in any criminal or civil action or other administrative or legal proceeding except in one to enforce or achieve compliance with the terms of this Consent Agreement and its accompanying Final Order.

45. The undersigned signatory to this Consent Agreement for the Respondent certifies that he is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

46. The provisions of this CA/FO shall be binding upon Respondent, its officials, officers, agents, authorized representatives and any successor entity that may assume the Respondent's obligations.

47. Each party hereto agrees to bear its own costs and fees in this matter.

48. Respondent consents to service upon Respondent of a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

49. Pursuant to 40 C.F.R. § 22.31(b), the Effective Date of the Final Order herein shall be the date when it is filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2. EPA shall notify the Town of such filing date.

50. Upon satisfactory completion of the tasks outlined herein, the EPA will deem this matter to be closed, and provide written notice to the Town.

RESPONDENT: Town of North Hempstead

BY: Elizabeth Botwin

Name (print): ELIZABETH BOTWIN

Title: Town Attorney

Date: 12/20/17

COMPLAINANT: U.S. Environmental Protection Agency, Region 2

BY: Kate Liden

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


DATE: JAN - 2 2018

**In the Matter of the Town of North Hempstead
Docket No. RCRA-02-2018-7501**

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order pursuant to Section 9006 of the Act and 40 C.F.R. § 22.18(b)(3). The Effective Date of this Order shall be the date of its filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 2, New York, New York. 40 C.F.R. § 22.31(b).

BY: _____


Peter D. Lopez
Regional Administrator
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007-1866

DATE: _____

1/3/18

**In the Matter of the Town of North Hempstead
Docket No. RCRA-02-2018-7501**

CERTIFICATE OF SERVICE

I certify that I have on this day caused to be sent the foregoing Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and one copy by hand to:

Office of the Regional Hearing Clerk.
U.S. EPA- Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Certified Mail Return Receipt Requested:

Amanda Abata, Esq.
Deputy Town Attorney
Office of the Town Attorney
Town of North Hempstead
Town Hall
220 Plandome Road
Manhasset, NY 11030

Dated: 1/9/2018
New York, New York

Gordon Meyers