



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
ONE CONGRESS STREET SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

January 29, 2009

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region I
One Congress Street
Suite 1100, Mail Code RAA
Boston, MA 02114-2023

BY HAND

Re: In the Matter of: Town of Newbury, Massachusetts
Docket No. CWA-01-2008-0083

Dear Ms. Santiago,

Enclosed for filing, please find a Consent Agreement and Final Order (CAFO) settling the matter referenced above.

Thank you for your attention to this matter.

Sincerely,


Michael Wagner
Senior Enforcement Counsel
EPA Region 1

Enclosure

cc: Vincent J. Russo, Chairman, Newbury Board of Selectman

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

IN THE MATTER OF:)	
)	
)	CONSENT AGREEMENT
Town of Newbury, Massachusetts)	AND FINAL ORDER
)	
)	Docket No. CWA 01-2008-0083
)	
Respondent.)	
_____)	

CONSENT AGREEMENT

Statutory Authority

1. This Consent Agreement and Final Order is issued under the authority granted to the U.S. Environmental Protection Agency ("EPA") by Section 309(g) of the Clean Water Act (the "Act"), 33 U.S.C. § 1319(g), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or suspension of Permits," at 40 C.F.R. Part 22 (the "Consolidated Rules").
2. Pursuant to 40 C.F.R. § 22.13(b) of the Consolidated Rules, the parties agree to simultaneously commence and conclude this action by the issuance of this Consent Agreement and Final Order.
3. The Town of Newbury, Massachusetts ("Town" or "Respondent") admits that jurisdiction exists for the entry of this Consent Agreement, and consents to the assessment of an administrative penalty set forth herein. Respondent neither admits nor denies the other legal or factual allegations contained in this Consent Agreement.

REQUIRED NOTICE

4. Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), provides that, prior to issuing an order assessing a penalty under Section 309(g) of the Act, 33 U.S.C. §1319(g), EPA must provide public notice of, and reasonable opportunity to comment on, the proposed issuance of such order. EPA will satisfy this requirement for notice by providing public notice of, and reasonable opportunity to comment on, this Consent Agreement prior to the issuance of the Final Order.

ALLEGATIONS

5. The Respondent is a municipality, as defined in Section 502(4) of the Act, 33 U.S.C. § 1362(4).
6. The Respondent is a person under Section 502(5) of the Act, 33 U.S.C. § 1362(5).
7. The Respondent is the owner and operator of a regulated small municipal separate storm sewer system ("Regulated Small MS4") as defined at 40 C.F.R. §§ 122.26(b)(16) and 122.32(a)(1).
8. The Town discharges, from its Regulated Small MS4, storm water containing pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), from catch basins through one or more outfalls constituting "point sources" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14), to waters including, but not limited to, the Plum Island River, the Little River, the Basin in the Merrimack River Estuary, and the Merrimack River.
9. The Plum Island River, the Little River, and the Basin in the Merrimack River Estuary are tributaries to the Merrimack River.

10. The Plum Island River, the Little River, the Basin in the Merrimack River Estuary, and the Merrimack River are "waters of the United States" as defined in 40 C.F.R. § 122.2 and "navigable waters" as defined by Section 502(7) of the CWA, 33 U.S.C. §1362(7).
11. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person from a point source into waters of the United States except in compliance with, among other things, a National Pollutant Discharge Elimination System ("NPDES") permit issued under Section 402 of the Act, 33 U.S.C. § 1342.
12. Pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p), and the Storm Water Regulations set forth at 40 C.F.R. §§ 122.26(a)(9), 122.32, and 122.33, Regulated Small MS4s must have permit coverage to discharge storm water to waters of the United States.
13. On April 18, 2003, the Director of the Office of Ecosystem Protection of EPA, Region I (the "Director of OEP"), issued a NPDES General Permit for Storm Water Discharges from Regulated Small MS4s (the "Permit") pursuant to the authority given to the Administrator of EPA by Section 402 of the Act, 33 U.S.C. § 1342. The Permit authorizes Regulated Small MS4s to discharge storm water to the waters of the United States when certain conditions are met.
14. On July 30, 2003, the Town submitted to EPA its Notice of Intent that the discharges from its MS4 would be covered by the Permit. On September 26, 2003, EPA granted the Town authorization to discharge stormwater from its MS4 subject to the terms and conditions of its Permit (Permit No. MAR041084).
15. Pursuant to 40 C.F.R. § 122.34(g)(3) and the Permit, Part II, F.1., the Town was required to submit annual reports by May 1 each year, commencing May 1, 2004 ("Annual

Reports").

16. The Town has failed to submit the Annual Reports due on May 1, 2007, and May 1, 2008, in violation of the Permit.
17. By violating the terms and conditions of the Permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Town has violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).
18. On August 3, 2007, EPA, Region I issued a letter to the Town informing them that EPA had not received the May 1, 2007 Report and reminding the Town that an additional annual report would be required on May 1, 2008.

TERMS OF SETTLEMENT

19. The parties have agreed to a settlement on the following terms. In agreeing to the following penalty, EPA has taken into account the statutory penalty factors at Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3).

PAYMENT OF PENALTY

20. The Respondent shall pay a penalty of four thousand dollars (\$4,000) for those past violations of the Act specifically alleged in the preceding paragraphs.
21. Within ten (10) days of the effective date of this Consent Agreement and Final Order, Respondent shall submit a cashier's or certified check payable to "Treasurer, United States of America" and referencing the title and docket number of the action, in the amount specified in the preceding paragraph to:

EPA Region I
P.O. Box 979077
St. Louis, MO 63197-9000.

Respondent shall simultaneously submit copies of the penalty payment check to both:

Wanda Rivera (RAA)
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region I
One Congress Street
Boston, MA 02114-2023

and

Diane Boisclair
Office of Environmental Stewardship (SEW)
U.S. Environmental Protection Agency
Region I
One Congress Street
Boston, MA 02114-2023.

22. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), a failure by the Respondent to pay the penalty assessed by this Consent Agreement and Final Order in full by its due date shall subject the Respondent to a civil action to collect the assessed penalty, plus interest at current prevailing rates from the date of this Consent Agreement and Final Order. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(b)(2) or, if payment is delinquent by more than 90 days, at the rate set forth in 31 C.F.R. § 901.9(d), promulgated under 31 U.S.C. § 3717. Any person who fails to pay on a timely basis the amount of an assessed penalty, unless such failure results from causes beyond the reasonable control of Respondent, shall be required to pay in addition to such amount and interest, attorney's fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate

amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

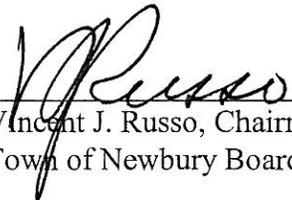
GENERAL PROVISIONS

23. Respondent waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in this Consent Agreement and Final Order.
24. The provisions of this Consent Agreement and Final Order shall be binding upon Respondent, its agents, successors and assigns.
25. Each party shall bear its own costs and fees in this proceeding.
26. Issuance of this Consent Agreement and Final Order constitutes a full and complete settlement by EPA of all claims for judicial and administrative civil penalties pursuant to Sections 309(d) and (g) of the Act, 33 U.S.C. §§ 1319(d) and (g), for all past violations of the Act specifically alleged herein against the Respondent through the date of execution of this document by EPA, Region 1, Director of the Office of Environmental Stewardship.
27. Issuance of this Consent Agreement and Final Order does not constitute a settlement by EPA of its right to enforce the substantive legal requirements underlying this administrative penalty assessment, whether administratively or judicially pursuant to Sections 309(a), (b) and (c) of the Act, 33 U.S.C. §§ 1319(a), (b) and (c), or Section 504 of the Act, 33 U.S.C. § 1364.
28. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of the Act, 33 U.S.C. §§ 1251 et seq., or any regulations

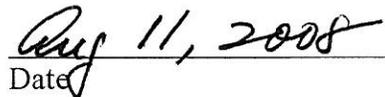
promulgated thereunder.

29. The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to enter into the terms and conditions of this Consent Agreement and Final Order and legally bind Respondent.

Town of Newbury, Massachusetts

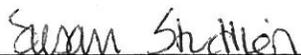


Vincent J. Russo, Chairman
Town of Newbury Board of Selectman

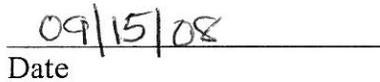


Date

U.S. Environmental Protection Agency



Susan Studlien, Director
Office of Environmental Stewardship



Date

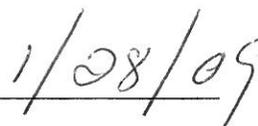
FINAL ORDER

Pursuant to Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and in accordance with 40 C.F.R. Part 22, the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the referenced Consent Agreement. This Consent Order shall become effective 30 days from today.

U.S. ENVIRONMENTAL PROTECTION AGENCY



LeAnn Jensen, Acting Regional Judicial Officer
U.S. EPA, Region I



Date

In the Matter of Town of Newbury, Massachusetts
EPA Docket No. CWA-01-2008-0083

CERTIFICATE OF SERVICE

I certify that the foregoing Expedited Settlement Agreement was transmitted to the following persons, in the manner specified, on the date below:

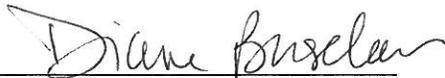
One copy
hand-delivered:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I
One Congress Street
Boston, MA 02114-2023

Copy by certified mail,
return receipt requested:

Vincent Russo, Chairman
Board of Selectman
Town of Newbury
Town Hall - 25 High Road
Newbury, MA 01951

Dated: 1-29-09



Diane Boisclair
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
One Congress Street, Suite 1100 (SEW)
Boston, MA 02114-2023
Phone: (617) 918-1762
Fax: (617) 918-0762

