

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Region 2**

2017 AUG 15 AM 7:10
U.S. Environmental Protection Agency

IN THE MATTER OF:

Binghamton Burial Vault Co. Inc.
1114 Porter Avenue
Binghamton, NY 13901

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-02-2017-3303

I. PRELIMINARY STATEMENT

Complainant, the United States Environmental Protection Agency (“EPA”), having issued Complaint Number CWA-02-2017-3303 on November 3, 2016, against Binghamton Burial Vault Co. Inc. (“Respondent”), and

Complainant and Respondent having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby agreed, and ordered as follows:

II. PROCEDURAL AND FACTUAL BACKGROUND

1. EPA initiated this proceeding for the assessment of a civil penalty, pursuant to Section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g).
2. The Complaint alleges that Respondent is liable for violating Section 301 of the CWA, 33 U.S.C. § 1311, for failing to comply with the terms of the New York State Department of Environmental Conservation (“NYSDEC”) State Pollutant Discharge Elimination System (“SPDES”), Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (“MSGP”) GP-0-12-001, issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, at the facility that Respondent operates.

3. EPA notified the State of New York regarding this action and offered an opportunity for the State of New York to confer with EPA on the proposed penalty assessment, pursuant to 40 C.F.R. Part 22.
4. This action was publicly noticed. No public comment was received.
5. Respondent requested informal settlement discussions.
6. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted against Respondent. Respondent hereby waives any defenses it might have as to jurisdiction and venue, admits the factual and legal allegations contained in the Complaint and consents to the terms of this Consent Agreement and Final Order, but in so consenting to the factual and legal allegations does not waive any defenses it may have to any such factual or legal allegations not based on jurisdiction and not based on failure to state a claim.
7. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

III. TERMS OF SETTLEMENT

Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), 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, 40 C.F.R. § 22.18, it is hereby agreed by and between the parties, and Respondent voluntarily and knowingly agrees as follows:

8. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the nature of the violations, EPA has determined that an appropriate civil penalty to settle this action is in the amount of fourteen thousand seven hundred dollars (\$14,700.00).
9. For purposes of settlement, Respondent consents to the issuance of this Consent Agreement and consents to the payment of the civil penalty cited in the foregoing Paragraph.
10. Respondent shall pay the full penalty amount within thirty (30) calendar days of its receipt of the Final Order adopting this Agreement. If the due date for payment falls on a weekend or legal federal holiday, the due date is the next business day. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered received that day. Respondent shall submit a cashier's or certified check, including the name and docket number of this case, for **FOURTEEN THOUSAND SEVEN HUNDRED DOLLARS (\$14,700)**, payable to "Treasurer, United States of America," by one of the following methods:

Regular Mail

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

Overnight Mail

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Wire Transfer: Wire transfers should be directed to the Federal Reserve Bank of New York with the following information:

ABA=021030004
Account=68010727
SWIFT address=FRNYUS33
33 Liberty Street
New York, NY 10045

Field lag 4200 of Fedwire message should read, "D 68010727 Environmental Protection Agency."

Online: This option is available through the Department of Treasury, at www.pay.gov. Enter "sfo 1.1" in the search field. Open the form and complete the required fields.

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

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

and

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, NY 10007-1866

Payment must be received at the above address no later than thirty (30) calendar days after the date of signature of the Final Order (at the end of this document). The date by which payment must be received shall hereafter be referred to as the "due date."

- a. Failure to pay the penalty in full according to the above provisions will result in a referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
 - b. 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.
 - c. In addition, pursuant to Section 309(g)(9) of the CWA, 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.
 - d. Respondent also may be required to pay attorneys' fees and costs for collection proceedings in connection with nonpayment.
11. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondent's federal or state taxes.

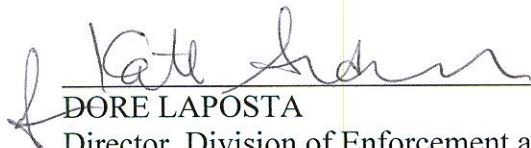
IV. OTHER TERMS AND CONDITIONS

12. Respondent shall submit all notices and reports required by this Consent Agreement and Final Order by first class mail to:

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

13. Respondent knowingly and explicitly waives its right under Section 309(g) of the Act, 33 U.S.C. § 33 U.S.C. § 1319(g), to request or to seek any Hearing on or Judicial Review of the Complaints consolidated herein or on any of the allegations therein asserted, on this Consent Agreement or the Findings of Fact and Conclusions of Law set forth herein, or on the accompanying Final Order.
14. This Consent Agreement and Final Order shall apply to and be binding upon Respondent, as well as applying to and binding upon the Respondent's officers, directors, and employees, in their capacities as representatives of Respondent as well as on the Respondent's successors and assigns, including, but not limited to, Respondent's subsequent purchasers.
15. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law, nor waiver of any defense, objection or response the Respondent may assert in response to any claim that the agreement is violated.
16. This Consent Agreement and Order 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.
17. This Consent Agreement and Final Order constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the violations alleged in the Complaint. Nothing in this Consent Agreement and Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this Consent Agreement and Final Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.
18. 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.
19. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this Consent Agreement and Order.
20. Respondent consents to service upon Respondent by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

FOR COMPLAINANT, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
REGION 2:



DORE LAPOSTA
Director, Division of Enforcement and Compliance Assistance
United States Environmental Protection Agency-Region 2
290 Broadway
New York, New York 10007-1866

AUG - 7 2017
DATE

FOR RESPONDENT, BINGHAMTON BURIAL VAULT CO. INC.:



SIGNATURE

7-21-17
DATE

Brian Aisbett


NAME (Please print)

President

TITLE (Please print)

V. FINAL ORDER

The Acting Director of the Division of Enforcement and Compliance of the U.S. Environmental Protection Agency, Region 2, 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, U.S. EPA Region 2, New York, New York.



DORE LAPOSTA
Director, Division of Enforcement and Compliance Assistance
United States Environmental Protection Agency-Region 2
290 Broadway
New York, New York 10007

AUG - 7 2017

DATE

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Region 2**

IN THE MATTER OF:

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1114 Porter Avenue
Binghamton, NY 13901

Respondent.

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CERTIFICATE OF SERVICE

I certify that, on the date noted below, I served the foregoing fully executed Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner.

Copy by Certified Mail
Return Receipt Requested: Brian Abbey, Owner
Binghamton Burial Vault Co. Inc.
1114 Porter Avenue
Binghamton, NY 13901

Original and One Copy
By Internal Mail (pouch): Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th floor
New York, New York 10007-1866

Date: AUG 14 2017



Branch Secretary