



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAR 30 2017

CERTIFIED MAIL 7007 2680 0000 3272 1870
RETURN RECEIPT REQUESTED

Mr. Bobby Frye
President
Mount Olive Pickle Company
One Cucumber Boulevard
Mount Olive, North Carolina 28365

Re: Consent Agreement and Final Order
Docket No. CWA-04-2017-4500(b)
Mount Olive Pickle Company

Dear Mr. Frye:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order that has been finalized by the U.S. Environmental Protection Agency and the Regional Administrator. Please make note of the provisions under Paragraph IV. Payment.

Should you have any questions or concerns regarding this matter, please contact LCDR Tara L. Houda at (404) 562-9762.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary S. Walker".

Mary S. Walker
Director
Water Protection Division

Enclosure

cc: Mr. Bradley Bennett, Stormwater Permitting Program Supervisor
North Carolina Department of Environmental Quality

Ms. Amy P. Wang
Ward and Smith, P.A.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

RECEIVED
2017 MAR 30 PM 4:35
REGIONAL CLERK

IN THE MATTER OF:)	
)	CONSENT AGREEMENT AND
MOUNT OLIVE PICKLE COMPANY, INC)	FINAL ORDER
MOUNT OLIVE, WAYNE COUNTY,)	
NORTH CAROLINA)	
)	
RESPONDENT.)	DOCKET NO. CWA-04-2017-4500(b)

CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B), 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*, published at 64 Fed. Reg. 40,176 (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)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), 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 delegated this authority to the Director of the Water Protection Division, of the EPA, Region 4 ("Complainant").

II. Allegations

3. Mount Olive Pickle Company, Inc. ("Respondent") is a corporation duly organized and existing under the laws of the State of North Carolina and is therefore a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At all times relevant to this action, the Respondent owned and/or operated an Food and Kindred Products processor facility, as identified by Standard Industrial Classification ("SIC") Code 2035 Pickles, Sauces, and Salad Dressings, located One Cucumber Boulevard, in Mount Olive, Wayne County, North Carolina ("Facility").

5. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with a National

Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes an NPDES Permit Program authorizing the EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants, including stormwater, into navigable waters subject to specific terms and conditions. The EPA has granted the State of North Carolina, through the North Carolina Department of Environmental Quality (“NCDEQ”), approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. NCDEQ (formerly known as the North Carolina Department of Environment and Natural Resources) issued the General Permit No. NCG060000 to Discharge Stormwater Under the National Pollutant Discharge Elimination System for establishments primarily engaged in the following activities: Food and Kindred (“Permit”), in accordance with the North Carolina General Statute 143-215.1, and the CWA. The General Permit became effective December 1, 2012, and shall expire on October 31, 2017. Coverage under the Permit may be obtained by submitting a Notice of Intent (“NOI”) to NCDEQ and receiving a certificate of coverage.

8. The NCDEQ is responsible for the issuance, compliance and enforcement of the North Carolina General Statute 143-215.1, and the approval of coverage under the Permit upon submission and approval of a Notice of Intent (“NOI”) requesting coverage.

9. The Permit is a North Carolina statewide NPDES general permit governing stormwater point source discharges associated with industrial activities including Food and Kindred Activities.

10. Pursuant to Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B), a NPDES permit is required for any “stormwater discharge associated with industrial activity.”

11. “Stormwater discharge associated with industrial activity,” as defined at 40 C.F.R. § 122.26(b)(14), means the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant.

12. Pursuant to 40 C.F.R. 122.26(b)(14)(xi), facilities under SIC Code 2035 are considered to be engaging in “industrial activity” for the purposes of 40 C.F.R. 122.26(b)(14).

13. Barlow Branch is a tributary to the Northeast Cape Fear River, which is a “navigable water” and a “water of the United States” as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7) and its implementing regulation 40 C.F.R. § 122.2.

14. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into navigable waters except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

15. On February 10, 2016, the EPA and NCDEQ performed a Compliance Stormwater Evaluation Inspection (“CSWEI”) at the Facility to evaluate Respondent’s compliance with the requirements of sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p) and the regulations promulgated thereunder at 40 C.F.R. § 122.26.

16. During the CSWEI, the EPA inspectors observed the following:

- A. The Facility has several industrial areas with exposure to stormwater runoff, including exposed storage area (“bone yard”), exposed storage area (“laydown yard”), employee parking with tanker receiving, and loading dock area.
- B. The Facility is a Food and Kindred Products processor (SIC Code 2035 Pickles, Sauces, and Salad Dressings), and in accordance with 40 C.F.R. § 122.26(b)(14)(xi), stormwater discharge associated with industrial activity, for which a NPDES permit is required, includes discharge from facilities identified by this SIC Code.
- C. The Facility indicated that it failed to submit a Notice of Intent (NOI) seeking coverage under the permit.

17. From October 1, 1992 to July 5, 2016, stormwater associated with industrial activity was discharged from the Facility through the outfalls at the parking lot on the south side of the property by Vine Street and the southeastern side of the property on Cucumber Boulevard of the site and through sheet flow along the material storage area on the western side of the property by the National Guard Armory, and along the western side of the property from outdoor material storage along the corner of Relish Street and Witherington Street. These discharges go to the Town of Mount Olive Municipal Separate Storm Sewer System (“MS4”), which ultimately discharges to Barlow Branch. At no point during this time did the Facility submit an NOI to obtain coverage under the Permit. Such discharges of stormwater to waters of the United States were not authorized by a NPDES permit and are therefore violations of Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p).

18. Therefore, the Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311, by discharging stormwater without proper authorization to waters of the United States.

19. After Respondent became aware of this violation, on July 6, 2016, Respondent submitted an NOI to NCDEQ requesting coverage under the Permit at the Facility. The authorization became effective on October 14, 2016, and will expire on October 31, 2017, and requires Respondent to comply with all provisions of the Permit.

III. Stipulations and Findings

20. Complainant and the 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.

21. For the purposes of this CA/FO, the Respondent admits the jurisdictional allegations set out above and admits the factual allegations set out above.

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

23. The 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.

24. By signing this CA/FO, the 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. The 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.

25. The EPA 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 the Respondent was materially false or inaccurate at the time such information or certification was provided to the EPA.

26. Complainant and the 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

27. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, the EPA has determined that one hundred thirty-one thousand eight hundred fifty-six dollars (\$131,856) is an appropriate civil penalty to settle this action.

28. The 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 the 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

29. At the time of payment, the 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

30. The penalty amount specified above shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of federal taxes.

31. 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), 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 (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

32. 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. 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.

33. Issuance of this CA/FO shall not be deemed as prohibiting, altering, or in any way limiting the ability of the EPA to pursue any other enforcement actions available to it under law. Such actions may include, without limitation, any administrative, civil, or criminal action to seek penalties, fines, injunctive, or other appropriate relief, or to initiate an action for imminent and substantial endangerment, under the CWA or any other federal or state statute, regulation, or permit.

34. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and the Respondent of all claims for civil penalties pursuant to the CWA with respect to only those violations alleged in this CA/FO. Except as otherwise set forth herein, compliance with this CA/FO shall resolve the allegations of violations contained herein.

35. 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.

36. 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.

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

38. Any change in the legal status of the Respondent, including but not limited to any transfer of assets of real or personal property, shall not alter the Respondent's responsibilities under this CA/FO.

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

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

For Complainant:

Mrs. Kavita K. Nagrani
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9697

For Respondent:

Ms. Amy P. Wang
Ward and Smith, P.A.
1001 College Court
New Bern, North Carolina 28562-0867
(252) 672-5516

41. 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 proposed CA/FO based on comments received during the public comment period.

42. 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.

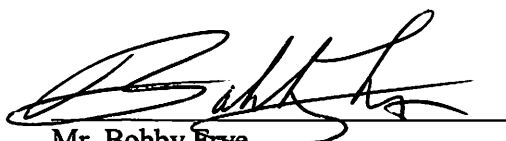
43. Effective upon signature of this CA/FO by the Respondent, the Respondent agrees that the time period commencing on the date of its signature and ending on the date the EPA receives from the Respondent the payment required by this CA/FO shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the EPA related to the matters addressed in this CA/FO and that, in any action brought by the EPA related to the matters addressed, the Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If the EPA gives notice to the Respondent that it will not make this CA/FO effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by the EPA.

VI. Effective Date

44. 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:

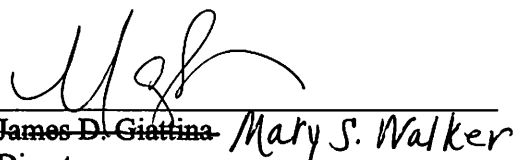
For the RESPONDENT, Mount Olive Pickle Company, Inc.:



Mr. Bobby Frye
President

Date: 12/14/14

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4:


~~James D. Giattina~~ Mary S. Walker

Director
Water Protection Division
U.S. EPA, Region 4

Date: 3/17/17

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

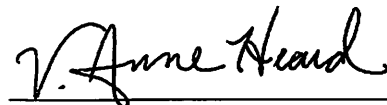
IN THE MATTER OF:)
)
MOUNT OLIVE PICKLE COMPANY, INC.) CONSENT AGREEMENT AND
MOUNT OLIVE, WAYNE COUNTY,) FINAL ORDER
NORTH CAROLINA)
)
RESPONDENT.) DOCKET NO. CWA-04-2017-4500(b)
_____)

FINAL ORDER

In accordance with 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. Part 22, and authorities delegated to me, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), the Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY.

MAR 30 2017
Date: _____



V. Anne Heard
Acting Regional Administrator

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of **MOUNT OLIVE PICKLE COMPANY, INC.**, Docket No. CWA-04-2017-4500(b) (filed with the Regional Hearing Clerk on 3-30 2017) was served on 3-30, 2017, in the manner specified to each of the persons listed below.

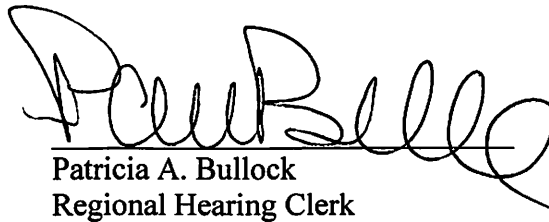
By hand-delivery:

Mrs. Kavita K. Nagrani
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

By certified mail,
return receipt requested:

Ms. Amy P. Wang
Ward and Smith, P.A.
1001 College Court
New Bern, North Carolina 28562-0867

Bradley Bennett, Stormwater Permitting Program Supervisor
Stormwater Permitting Program
NC Division of Energy, Mineral and Land Resources
North Carolina Department of Environmental Quality
1612 Mail Service Center
Raleigh, North Carolina 27699-1612



Patricia A. Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9511