



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

**March 11, 2022**

**VIA ELECTRONIC MAIL** - [tcotter@baynj.org](mailto:tcotter@baynj.org)

**March 11, 2022 @ 3:23 pm**  
**USEPA – Region II**  
**Regional Hearing Clerk**

Mr. Thomas Cotter, Director of Public Works  
City of Bayonne  
630 Avenue C  
Bayonne, New Jersey 07002

**Re: Consent Agreement and Final Order, Docket No. CWA-02-2022-3303**  
**City of Bayonne Municipal Separate Storm Sewer System (“MS4”)**  
**NJPDES Permit No. NJG0151033**

Dear Mr. Cotter:

Enclosed is a copy of the signed Consent Agreement and Final Order (“CAFO”).

As the City agreed to in this CAFO, the City must pay the settlement penalty amount (\$11,000.00) on or before ninety (90) calendar days after the date of receipt of this Order to the “Treasurer of the United States of America.” Payments can be made by debit/credit card, check, or electronically, as detailed in Paragraph 19 of the CAFO. You must also send copies of the payment to each of the following:

Douglas McKenna  
Branch Chief, Water Compliance Branch  
U.S. Environmental Protection Agency, Region 2  
[McKenna.Douglas@epa.gov](mailto:McKenna.Douglas@epa.gov)

and

Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
[maples.karen@epa.gov](mailto:maples.karen@epa.gov)

Please note that once full payment is made this settles all civil penalties claims against you only for the Clean Water Act violations described in the CAFO. If you have any questions concerning the above, please contact Ms. Justine Modigliani, P.E., Chief, Compliance Section at (212) 637-4268.

Sincerely,

**For** Dore LaPosta, Director  
Enforcement and Compliance Assurance Division

Enclosures

cc: Don Hirsch, Bureau Chief – Northern, NJDEP ([Don.Hirsch@dep.nj.gov](mailto:Don.Hirsch@dep.nj.gov))  
Maria Coppola, NJDEP ([Maria.Coppola@dep.nj.gov](mailto:Maria.Coppola@dep.nj.gov))

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

March 11, 2022 @ 3:23 pm  
USEPA – Region II  
Regional Hearing Clerk

**IN THE MATTER OF:**

City of Bayonne  
630 Avenue C  
Bayonne, New Jersey 07002

**NJPDES Permit No. NJG0151033**

**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-02-2022-3303**

**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 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. On October 19, 2021, EPA filed the Complaint referenced herein against the City of Bayonne (“Respondent” or the “City”). The Complaint alleged that Respondent is liable for violations of the CWA in operation of its municipal separate storm sewer system (“MS4”) located in Bayonne, New Jersey, and proposed to assess a civil penalty of eighteen thousand dollars (\$18,000).
4. 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. CONCLUSIONS OF LAW AND JURISDICTION

5. 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.
6. Section 402 of the Act, 33 U.S.C. §1342, authorizes the Administrator of 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.
7. Pursuant to Section 402(b) of the Act, 33 U.S.C. §1342(b), the EPA granted authority to the New Jersey Department of Environmental Protection to issue State Pollutant Discharge Elimination System permits to facilities in New Jersey for the discharge of pollutants from said facilities from a point source to a navigable water of the United States.
8. Section 402(p) of the Act, 33 U.S.C. §1342(p), sets forth the requirements for discharges of stormwater.
9. NJDEP issued R9 – Tier A Municipal Stormwater General Permit, NJ0141852, a NPDES general permit for stormwater discharges from Municipal Separate Storm Sewer Systems (“MS4s”) (“Permit” or “MS4 General Permit”) on January 1, 2018, and it expires on December 31, 2022. The Permit supersedes the previous NJPDES permit (NJ0141852), which became effective in 2009 and expired on February 28, 2014, but had been administratively extended until the issuance of the current Permit.
10. The Administrator of 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 that is required to be regulated pursuant to 40 C.F.R. §122.32.
11. 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 NJDEP is the agency with the authority to administer the federal NPDES program in New Jersey 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 NJDEP by the EPA under Section 402(b) of the CWA, 33 U.S.C. §1342(b), facilities are required to obtain a NJPDES permit from the NJDEP for the discharge of pollutants from said facilities’ point source(s) to a navigable water of the United States.
12. The Respondent’s MS4 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).
13. 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.

**III. CONSENT AGREEMENT**

- 14. Paragraphs 1 through 13, above, are re-alleged and incorporated herein by reference.
- 15. 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.
- 16. 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:

**IV. TERMS OF SETTLEMENT**

- 17. 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 Eleven Thousand Dollars (\$11,000.00), as stated in Paragraph 27, below.

**V. PAYMENT OF CIVIL PENALTY**

- 18. The Respondent shall pay a civil penalty in the amount of *Eleven Thousand Dollars (\$11,000.00)* to the "Treasurer of the United States of America."
- 19. 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
Finance Center Contacts:	Check Payments –	US Environmental Protection Agency Fines and Penalties	U.S. Bank Government Lockbox 979077 US EPA Fines & Penalties

<b>Craig Steffen</b> <b>(513-487-2091)</b>	<b>Fines and Penalties</b>	<b>Cincinnati Finance Center</b> <b>PO Box 979077</b> <b>St. Louis, MO 63197-9000</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, 21<sup>st</sup> Floor  
New York, New York 10007-1866

and

*AC*

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 ninety (90) 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").

20. 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.
21. 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.
22. 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.
23. 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.

#### **VI. GENERAL PROVISIONS**

24. 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.
25. 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.
26. 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.

27. 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.
28. 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.
29. 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.
30. This CA/FO constitutes a settlement by the EPA of all claims for civil penalties pursuant to the Act 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.
31. 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.
32. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CA/FO.

RESPONDENT:

BY: 

DATE: 2-23-22

**Thomas Cotter, Director of Public Works**  
City of Bayonne  
630 Avenue C  
Bayonne, New Jersey 07002

*AC*



**VII. 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: 03/11/2022

*For*

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

**MUNICIPAL COUNCIL OF THE CITY OF BAYONNE**

**RESOLUTION NO. 22-02-16-072**

**WHEREAS**, on October 19, 2021, the Administrator of the United States Environmental Protection Agency ("EPA") filed a Complaint against the City of Bayonne entitled "In the Matter of: City of Bayonne, 630 Avenue C, Bayonne, New Jersey 07002, NJPDES Permit No. NJG0151033," Docket No. CWA-02-2022-3303 (the "Complaint") alleging that the City was liable for violations of the Clean Water Act, 33 U.S.C. §1319(g) in operation of its separate storm sewer system ("MS4") located within the City; and

**WHEREAS**, the aforesaid Complaint proposed to assess a civil penalty of eighteen thousand dollars (\$18,000); and

**WHEREAS**, at all times herein, the City disputes the allegations set forth and recited in the EPA complaint;

**WHEREAS**, the EPA is agreeable to resolving this matter for the reduced amount of eleven thousand dollars (\$11,000) and has provided the City with a proposed Consent Agreement and Final Order reflecting same; and

**WHEREAS**, in that proposed Consent Agreement and Final Order, the City make no acknowledgement of liability and in an effort to conserve scarce municipal and judicial resources, and as a business decision only, it is in the best interest of the citizens of the City to resolve the issues alleged in said Complaint by way of the aforesaid Consent Agreement and Final Order for the amount of eleven thousand dollars (\$11,000) without further litigation and the expense and effort that litigation entails; and

**WHEREAS**, the City shall recoup said settlement funds in the amount of eleven thousand dollars (\$11,000) from the party responsible for the alleged allegation that gave rise to the violation; and

**WHEREAS**, funds are certified in Account #2-01-20-101-0000-029; now, therefore, be it

**RESOLVED**, by the Municipal Council as follows:

1. The Mayor and/or his designee is hereby authorized to execute the proposed Consent Agreement and Final Order provided by the EPA in full settlement of this matter for the amount of eleven thousand dollars (\$11,000).
2. The Municipal Treasurer is hereby authorized the to issue a check payable to the Treasurer of the united States of America pursuant to the aforesaid Consent Agreement and Final Order.
3. Funds shall be chargeable to Account #2-01-20-101-0000-029.

A TRUE COPY

*Madeline E. Medina*  
CITY CLERK

