

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF

Town of Rotterdam
1100 Sunrise Boulevard
Rotterdam, New York 12306

Respondent

Proceeding pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)

2017 JUL 10 AM 8:00
U.S. Environmental
Protection Agency
Region 2
CWA/FO/RO/2016-3309
CLERK

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. CWA-02-2016-3309

Complainant, the United States Environmental Protection Agency (“EPA”) filed the Complaint referenced herein on December 4, 2015, against Respondent, Town of Rotterdam. Complainant and Respondent (“the Parties”) having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order (“CA/FO” or “Agreement”) without further litigation is the most appropriate means of resolving this matter, hereby consent and agree as follows:

I. PRELIMINARY STATEMENT

1. EPA initiated this proceeding for the assessment of a civil penalty, pursuant to Section 309(g)(2)(a) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(g)(2)(a).
2. The Complaint alleged that Respondent is liable for violations of the Clean Water Act in the operation of its municipal separate storm sewer system (“MS4”) located in Schenectady County, New York, and proposed to assess a civil penalty of thirty-seven thousand five hundred dollars (\$37,500).
3. Respondent has not filed an Answer or requested a hearing pursuant to 40 C.F.R. Part 22. However, Respondent requested extensions of time to file an Answer on or about January 6, 2016, February 19, 2016, and April 29, 2016 in order to allow the parties time to reach a settlement in this matter. EPA's Regional Judicial Officer, for good cause shown and with the concurrence of the Complainant, issued orders granting the Respondent's requested extensions on or about January 13, 2016, April 19, 2016, and May 12, 2016. Since the Parties have agreed to enter into this Consent Agreement, it obviates the need for Respondent to file an Answer.
4. This CA/FO shall apply to and be binding upon Respondent, its officers, directors, employees, successors and assigns.

5. 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 waives any defenses it might have as to jurisdiction and venue, and without admitting or denying the factual allegations in the Complaint, consents to the terms of this Agreement.
6. Respondent waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

II. CIVIL PENALTY

7. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the nature of the violations, Respondent's agreement to perform a Supplemental Environmental Project ("SEP") and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of **FIFTEEN THOUSAND DOLLARS (\$15,000)**.
8. Respondent consents to the issuance of this Consent Agreement and Final Order, and consents, for the purposes of settlement, to the payment of the civil penalty cited in the foregoing paragraph and to the performance of the SEP.
9. Respondent shall pay the full penalty amount within thirty (30) 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 **FIFTEEN THOUSAND DOLLARS (\$15,000)**, 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 provide copies of this check to each of the following:

Melva J. Hayden, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, NY 10007-1866

and

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

10. In the event the payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date (on the 1st late day, 30 days of interest will have accrued), at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received.
11. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 31st day from the due date of any payment, and for each subsequent thirty-day period that the debt, or any portion thereof, remains unpaid. A six percent (6%) per annum penalty shall also be assessed on any unpaid principal amount if payment is not received within 90 days of the due date. Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
12. Respondent shall not claim the penalty as a federal or other tax deduction or credit.

13. 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.

III. SUPPLEMENTAL ENVIRONMENTAL PROJECT

SEP Performance

14. The Town of Rotterdam proposes to perform a Supplement Environmental Project (“SEP”) which consists of creating a porous pavement parking area and rain garden project. In addition, the SEP includes an educational component and use of Next Generation compliance tools.
 - a. Respondent shall complete this SEP, which the parties agree will result in pollution prevention through the reduction of storm water discharges to waters of the United States, as well as environmental restoration enhancing the condition of the impacted ecosystem;
 - b. Not more than thirty (30) days after receiving a copy of this Consent Agreement and Final Order, Respondent shall commence implementation of the SEP;
 - c. Respondent shall complete construction of the SEP no later than October 31, 2017, and has agreed that it shall continue operating and maintaining the SEP for a period of five (5) years beyond the completion date; and
 - d. Respondent shall complete the SEP at the Great Flats Nature Preserve Trail Head in accordance with the letters from Kate McGuirl, on behalf of the Town of Rotterdam, (collectively, “Town’s SEP Proposal”) dated June 8, 2016 and January 27, 2017 (attached hereto as Exhibit A and incorporated herein by reference), as follows:
 - i. Construct an approximately 4,000 square foot rain garden utilizing native plants designed to collect and infiltrate storm water from approximately 0.8 surrounding acres;
 - ii. Construct a 2,850 square foot porous pavement parking area;
 - iii. Erect educational signage depicting the structural elements of the SEP within the context of storm water pollution;
 - iv. Utilize Next Generation compliance tools to post data regarding construction sites, highway department maintenance of the storm water system, outfall investigations, facility self-assessments and complaint follow up onto a publicly accessible webpage; and
 - v. Complete five (5) years of SEP operation and maintenance.
15. The total expenditure for the SEP shall not be less than **ONE HUNDRED EIGHTY-SEVEN THOUSAND TWO HUNDRED THIRTY-THREE DOLLARS (\$187,233)**, in accordance with the specifications set forth in the SEP Proposal and the SEP cost estimates

(attached hereto as Exhibit B and incorporated herein by reference).

16. Any public statement, oral or written, in print, film, website or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action (USEPA Region 2 docket number CWA-02-2016-3309) taken by the U.S. Environmental Protection Agency for violations of Section 301 of the Clean Water Act."
17. With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:
 - a. that all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimated that the cost to implement the SEP is \$187,233;
 - b. that, as of the date of executing this CA/FO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
 - c. that the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;
 - d. that Respondent has not received and will not receive credit for the SEP in any other enforcement action;
 - e. that Respondent will not receive any reimbursement for any portion of the SEP from any other person;
 - f. that for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred, in performing the SEP; and
 - g. that Respondent is not a party to any open federal financial assistance transaction that is funding, or could fund, the same activity as the SEP described in Paragraph 14.

SEP Completion Report

18. Respondent shall submit a SEP Completion Report to EPA by November 30, 2017. The SEP Completion Report shall contain the following information:
 - a. A detailed description of the SEP as implemented;
 - b. A description of any operating problems encountered and the solutions thereto;
 - c. Itemized costs;

- d. Certification that the SEP has been fully implemented pursuant to the provisions of this Agreement; and
 - e. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).
19. In itemizing its costs in the SEP completion report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP completion report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment has been made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.
20. Respondent agrees that failure to submit the SEP Completion Report shall be deemed a violation of this Agreement, and Respondent shall become liable for stipulated penalties pursuant to Paragraph 26 below.
21. Respondent shall submit all reports required by this Agreement by first class mail to the following:
- Douglas McKenna, Chief
Water Compliance Branch
U.S. Environmental Protection Agency, Region 2
290 Broadway, 20th floor
New York, NY 10007-1866
- and
- Melva J. Hayden, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, NY 10007-1866
22. Respondent agrees that EPA may inspect the facility at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.
23. Respondent shall maintain legible copies of documentation of the underlying research and data for the SEP Completion Report, and shall provide the documentation to EPA not more than seven days after EPA requests such information.

24. In all documents or reports submitted to EPA pursuant to this Agreement, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

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 penalties for submitting false information, including the possibility of fines and imprisonment.

25. EPA Acceptance of SEP Report:

After receipt of the SEP Completion Report described in Paragraph 18 above, EPA will notify the Respondent, in writing, regarding:

- (i) Any deficiencies in the SEP Report itself, along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or
- (ii) Indicate that EPA concludes that the project has been completed satisfactorily; or
- (iii) Determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 26 herein.

If EPA elects to exercise option (i), above (i.e., if the SEP Report is determined to be deficient), but EPA has not yet made a final determination about the adequacy of SEP completion itself, EPA shall permit Respondent the opportunity to object in writing, to the notification of deficiency given pursuant to this paragraph, within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on the adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 26, below.

Stipulated Penalties

26. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in Paragraphs 14-17 above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 15 above, Respondent shall be liable for the stipulated penalties according to the provisions below:

- a. Except as provided in subparagraphs (i)- (iii) immediately below, where Respondent fails to timely and completely perform the SEP pursuant to this Agreement, Respondent shall pay a stipulated penalty to the United States in the amount of **TWENTY-TWO THOUSAND FIVE HUNDRED DOLLARS**

(\$22,500).

- (i) If the SEP is completed in accordance with Paragraph 14, and the Respondent spent at least 90 percent of the money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.
 - (ii) If the SEP is completed in accordance with Paragraph 14, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States of **TWO THOUSAND DOLLARS (\$2,000)**.
 - (iii) If the SEP is not completed in accordance with Paragraph 14, but the Complainant determines that the Respondent made good faith and timely efforts to complete the project and certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.
- b. If Respondent fails to submit the SEP Completion Report required by Paragraph 18 above, Respondent shall pay a stipulated penalty in the amount of **\$100.00** for each day after the report was originally due until the report is submitted.
 - c. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
 - d. Stipulated penalties shall begin to accrue the day after the SEP completion date or the day after the due date of the SEP Completion Report, whichever is applicable, and shall continue to accrue through the final day of the completion of the SEP or submission of the report.
 - e. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of a written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraph 9 above. Interest and late charges shall be paid as stated in Paragraphs 10-11 herein.

VII. OTHER TERMS AND CONDITIONS

- 27. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter to the Department of Justice for enforcement of the Agreement and for such other relief as may be appropriate.
- 28. 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.
- 29. Nothing in this Agreement shall be construed as a waiver by Complainant of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of the Agreement.

30. This Agreement, upon incorporation into a Final Order, and full satisfaction by the parties, shall be a complete, full and final settlement of the civil penalty owed for the violations alleged in the Complaint.
31. This Agreement shall not in any case affect EPA's right to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law whether or not alleged in this Agreement. This Agreement shall not affect Respondent's right to assert any defense in any action by EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
32. This Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law.
33. Compliance with this Agreement shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA.
34. Each undersigned representative of the parties to this Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Agreement and to execute and legally bind that party to it.
35. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this Agreement.
36. Respondent consents to service upon it by delivery of a copy of this Agreement 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

6/28/17

DATE

FOR RESPONDENT, TOWN OF ROTTERDAM:



SIGNATURE

JUNE 14, 2017

DATE

STEVEN A. TOMMASONE
NAME (Please print)

Town Supervisor
TITLE (Please print)

IV. FINAL ORDER

The 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



DATE

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF

Town of Rotterdam
1100 Sunrise Boulevard
Rotterdam, NY 12306

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-02-2016-3309

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed, by certified mail, return-receipt-requested, a copy of this **“Consent Agreement and Final Order”** to the following person at the address listed below:

Original and One Copy
By Hand:

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

Copy by Certified Mail
Return Receipt Requested:

Steven Tommasone, Town Supervisor
Town of Rotterdam
1100 Sunrise Boulevard
Rotterdam, New York 12306

Copy by Certified Mail
Return Receipt Requested:

Mr. Joseph DiMura, Director
Bureau of Water Compliance Programs
Division of Water
New York State Department of Environmental Conservation
625 Broadway - 4th Floor
Albany, New York 12233-3506

JUL 07 2017

Date



Signature

Yolande Majette

Print Name

WTS Branch Secretary

Title