



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

JUN 26 2012

CERTIFIED MAIL 70102780000182160423
RETURN RECEIPT REQUESTED

Mr. Brian L. Wheeler, P.E.
Executive Director
Tohopekaliga Water Authority
951 Martin Luther King Boulevard
Kissimmee, Florida 34741

Re: Consent Agreement and Final Order
Docket No. CWA-04-2012-4513(b)

Dear Mr. Wheeler:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order, finalized by the U.S. Environmental Protection Agency, Region 4 and the Regional Judicial Officer. Please make note of the provisions under Section IV. Payment.

Should you have any questions or concerns regarding this matter, please contact Mr. Michael Hom at (404) 562-9748 or via email at hom.michael@epa.gov.

Sincerely,

A handwritten signature in black ink that reads "Denisse D. Diaz". The signature is fluid and cursive, with the first name being the most prominent.

Denisse D. Diaz, Chief
Clean Water Enforcement Branch
Water Protection Division

Enclosure

cc: Mark Thomasson, Director
Division of Water Resource Management
Florida Department of Environmental Protection

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
TOHOPEKALIGA WATER AUTHORITY) CONSENT AGREEMENT AND
KISSIMMEE, FLORIDA) FINAL ORDER
)
)
RESPONDENT) Docket No. CWA-04-2012-4513(b)
)
)
_____)

RECEIVED
EPA REGION IV
2012 JUN 26 AM 7:00
HEARINGS CLERK

CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(A) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(A), 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*, including Subpart I, published at 64 Fed. Reg. 40176 (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)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), is vested in the Administrator of the United States Environmental Protection Agency (“EPA”). The Administrator has delegated this authority to the Regional Administrator Region 4, who in turn has redelegated this authority to the Director of the Water Protection Division, who in turn has delegated this authority to the Chief of the Clean Water Enforcement Branch of EPA Region 4 (“Complainant”).

II. Allegations

3. At all times relevant to this action, Tohopekaliga Water Authority, Kissimmee, Florida (“Respondent”), was a municipality duly organized and existing under the laws of the State of Florida and, therefore, a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. §§ 503.9(o) and (q).

4. At all times relevant to this action, Respondent owned three Publicly Owned Treatment Works (“POTW”): the Poinciana Wastewater Treatment Plant (WWTP) #1, located at 5299 Robert McLane Boulevard, Kissimmee, Florida; Poinciana WWTP #2 (Cypress West), located at 1000 North Rhododendron, Poinciana, Florida; and Poinciana WWTP #3 (Walnut Drive), located at 602 South Country Club Road, Poinciana, Florida. The Poinciana WWTP #2 has a design flow rate equal to or greater than one million gallons per day, serves 10,000 people or more or is a “Class I sludge management facility” as defined in 40 C.F.R. § 503.9(c).

5. Respondent is a “person who prepares sewage sludge” as defined in 40 C.F.R. § 503.9(r), as either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge, and is thus subject to the requirements of the CWA and 40 C.F.R. Part 503.

6. Section 405(e) of the CWA, 33 U.S.C. § 1345(e), makes it unlawful for any person to dispose of sewage sludge from a treatment works treating domestic sewage except in accordance with regulations promulgated pursuant to Section 405(d) of the CWA, 33 U.S.C. § 1345(d), which are found at 40 C.F.R. Part 503.

7. 40 C.F.R. Part 503 establishes standards for the use and disposal of sludge, and consists of general requirements, pollutant limits, management practices, operational standards, frequency of monitoring, recordkeeping, and reporting, for the final use or disposal of sewage sludge generated during the treatment of domestic sewage in a treatment works.

8. 40 C.F.R. § 503.18(a) requires Class I sludge management facilities, POTWs with a design flow rate equal to or greater than one million gallons per day and POTWs that serve 10,000 people or more to submit certain information to the permitting authority (EPA) on February 19th of each year. This information is hereinafter referred as the “annual sludge report.”

9. Respondent submitted the annual sludge report for calendar year 2009 and 2010 with data related to Poinciana WWTP #1, #2, and #3. The annual sludge reports indicated that Respondent disposed approximately 397.2 dry metric tons (dmt) of sewage sludge from Poinciana WWTP #1, #2, and #3 in 2009, and 268.1 dmt from Poinciana WWTP #2 and #3 in 2010. Poinciana WWTP #1 did not land apply in 2010.

10. 40 C.F.R. § 503.15(c)(1) requires that “[o]ne of the vector attraction reduction requirements in § 503.33 (b)(1) through (b)(10) shall be met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site.” The Respondent submitted data to support the vector attraction reduction option requirement by selecting Option #3 [§ 503.33(b)(3)]. Under this option, “...vector attraction reduction can be demonstrated by digesting a portion of the previously digested sewage sludge that has a percent solids of two percent or less aerobically in the laboratory in a bench-scale unit for 30 additional days at 20 degrees Celsius. When at the end of the 30 days, the volatile solids in the sewage sludge at the beginning of that period is reduced by less than 15 percent, vector attraction reduction is achieved.”

11. Respondent failed the vector attraction reduction Option #3 requirement at the Poinciana WWTP #1, #2, and #3 in 2009, and at the Poinciana WWTP # 2 in 2010. Respondent has alleged that the failure to satisfy the vector attraction reduction Option #3 requirement was due to laboratory error, of which it learned after-the-fact and reported to Complainant.

12. 40 C.F.R. § 503.16(a)(1) requires that “[t]he frequency of monitoring for ...the pathogen density requirements in § 503.32(a) and § 503.32(b)(2); ...shall be the frequency in Table 1 of § 503.16.” Based on the amount of sewage sludge disposed, Respondent was required to monitor the pathogen density at a minimum of once per year. Respondent has alleged that the

failure to monitor pathogen density was the result of a miscommunication between the outgoing operator and the new operator.

13. Respondent did not monitor the pathogen density at Poinciana WWTP #2 or WWTP #3 in 2010.

III. Stipulations and Findings

14. Complainant and 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.

15. Respondent is a “person who prepares sewage sludge” as defined in 40 C.F.R. § 503.9(r) and is subject to the requirements of the CWA and 40 C.F.R. Part 503.

16. Respondent is the owner of a POTW with a design flow rate equal to or greater than one million gallons per day, or that serves 10,000 people or more, or is a Class I sludge management facility which is required to submit an annual sludge report on February 19th of each year pursuant to 40 C.F.R. § 503.18.

17. Respondent submitted the annual sludge reports for calendar year 2009 and 2010 indicating that Respondent disposed approximately 397.2 dmt of sewage sludge from Poinciana WWTP #1, #2, and #3 in 2009, and 268.1 dmt from Poinciana WWTP #2 and #3 in 2010.

18. Respondent violated Section 405(e) of the CWA, 33 U.S.C. § 1345(e), by land applying sewage sludge without monitoring the pathogen density at Poinciana WWTP #2 and WWTP #3 in 2010.

19. Respondent violated Section 405(e) of the CWA, 33 U.S.C. § 1345(e), by land applying sewage sludge without achieving compliance with the vector attraction reduction Option #3 requirement at the Poinciana WWTP #1, #2, and #3 in 2009, and at the Poinciana WWTP # 2 in 2010.

20. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out above and neither admits nor denies the factual allegations set out above.

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

22. 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.

23. By signing this CA/FO, 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. 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.

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

25. Complainant and 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

26. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, the EPA has determined that Seven Thousand Dollars (\$7,000) is an appropriate civil penalty to settle this action.

27. 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 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

28. At the time of payment, 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

29. The penalty amount specified in Paragraph 26 above shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of federal taxes.

30. 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), attorneys 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

31. This CA/FO 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. 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.

32. Nothing in this CA/FO shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Respondent's violation of this CA/FO or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any federal or state statute, regulation or permit.

33. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and Respondent of all claims for civil penalties pursuant to the CWA with respect to only those violations alleged in this CA/FO. 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. Other than as expressed herein, Complainant does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

34. 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.

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

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

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

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

For Complainant:

Ms. Michele Wetherington
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9613

For Respondent:

Mr. Brian L. Wheeler, P.E.
Executive Director
Tohopekaliga Water Authority
951 Martin Luther King Boulevard
Kissimmee, Florida 34741

39. 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 consent agreement and proposed final order based on comments received during the public comment period.

40. 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 Florida was provided a prior opportunity to consult with Complainant regarding this matter.

41. 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:

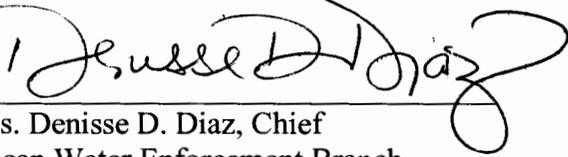
For RESPONDENT, TOHOPEKALIGA WATER AUTHORITY:



Mr. Brian L. Wheeler, P.E.
Executive Director
Tohopekaliga Water Authority

Date: 4/2/2012

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:



Ms. Denisse D. Diaz, Chief
Clean Water Enforcement Branch
Water Protection Division
U.S. EPA, Region 4

Date: 6/20/12

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	
)	CONSENT AGREEMENT AND
Tohopekaliga Water Authority)	FINAL ORDER
Kissimmee, Florida)	
)	
Respondent)	Docket No. CWA-04-2012-4513(b)
)	
)	
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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*, including Subpart I, 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)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: June 25, 2012



Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of Tohopekaliga Water Authority, Kissimmee, Florida, Docket No. **CWA-04-2012-4513(b)** (filed with the Regional Hearing Clerk on **JUN 26 2012**, 2012) was served on **JUN 26 2012**, 2012, in the manner specified to each of the persons listed below.

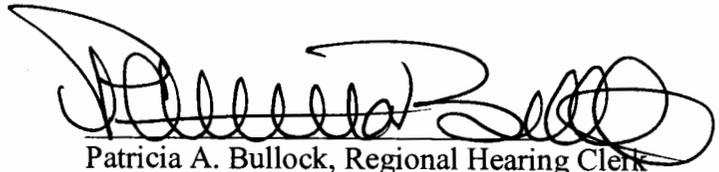
By hand-delivery:

Michele Wetherington
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

**By certified mail,
return receipt requested:**

Brian L. Wheeler, P.E.
Executive Director
Tohopekaliga Water Authority
951 Martin Luther King Boulevard
Kissimmee, Florida 34741

Mark Thomasson
Director, Division of Water Resource
Management
Florida Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, Florida 32399-2400



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9511