

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Town of Binghamton
279 Park Avenue
Binghamton, New York 13903

Respondent

SPDES Permit No. NYR20A009

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-02-2017-3305

2017 OCT 17 09:21:00

I. PRELIMINARY STATEMENT

Complainant, the United States Environmental Protection Agency (“EPA”), having filed the Complaint referenced herein on March 15, 2017, against the Respondent Town of Binghamton; 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 (“CA/FO”) 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 Ordered, and Adjudged 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’s (“NYSDEC’s”) State Pollutant Discharge Elimination System (“SPDES”) General Permit for Storm Water Discharges from Municipal Separate Storm Sewer Systems (“MS4 General Permit”), issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, for the MS4 that the Respondent owns and 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. A Public Notice of this matter was published and no comments were received.
5. EPA and Respondent engaged in informal settlement discussions which resulted in this CA/FO.
6. Respondent, without admitting liability for the violations asserted in the Complaint or the factual allegations set forth therein, waives any defenses it might have as to jurisdiction and venue, and consents to the terms of this Agreement.
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 eighteen thousand dollars (\$18,000.00).
9. For purposes of settlement, Respondent consents to the issuance of this CA/FO, and agrees, for the purposes of settlement, to pay the civil penalty cited in the foregoing Paragraph.
10. Respondent shall pay a civil penalty in the amount of **eighteen thousand dollars (\$18,000)**, to be paid in two equal payments of nine thousand dollars (\$9,000). The payments are due on November 30, 2017 and February 28, 2018 ("due date"). Payment must be received by 11:00 a.m. Eastern Standard Time to be considered received that day.
11. Payments shall be made by one of the following methods:

By cashier's or certified check, including the name and docket number of this case, payable to "Treasurer, United States of America," mailed to:

Regular Mail

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

Mail with Signature Upon Delivery
 Receipt Requested by Sender

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

By Wire Transfer, 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 tag 4200 of Fedwire message should read, "D 68010727 Environmental Protection Agency."

Online, 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.

12. Respondent shall send copies of the checks or payment documentation if payment is made by wire transfer or online to each of the following:

Cynthia L. Psoras, Esq.
Assistant Regional Counsel Water and General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th 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

13. 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.
14. Further, if the payments are not received on or before each of the due dates, 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 each due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$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 six percent (6%) per annum penalty also will be applied on any principal amount not paid within ninety (90) days of its due date.

In addition, pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if payment is not received by each due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly

nonpayment penalty is twenty percent (20%) of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter. Respondent will also be required to pay attorneys' fees and costs for collection proceedings in connection with nonpayment.

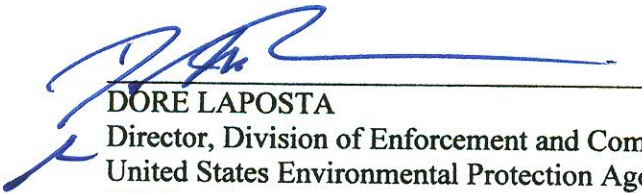
15. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondent's federal or state taxes.

IV. GENERAL PROVISIONS

16. 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.
17. This CA/FO 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.
18. Nothing in this CA/FO 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.
19. 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.
20. Respondent's full compliance with this Consent Agreement shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Respondent's full compliance with this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in the complaint.
21. This CA/FO constitutes a settlement by the EPA for all claims of civil penalties pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), for the violations alleged in the Complaint. 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 all such laws and regulations.
22. 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.

23. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CA/FO.
24. Respondent consents to service upon Respondent by a copy of this CA/FO 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

10/12/17
DATE

FOR RESPONDENT, TOWN OF BINGHAMTON:



SIGNATURE

Sept 19, 2017
DATE


Timothy P. Whitesell
NAME (Please print)

Supervisor
TITLE (Please print)

V. 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") has further re-delegated such authority to the Director of the Division of Enforcement and Compliance Assistance, Region 2, EPA, to enter into 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.



DORE LAPOSTA

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

10/12/17

Date

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
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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:

Mr. Tim Whitesell, Town Supervisor
Town of Binghamton
279 Park Avenue
Binghamton, New York 13903

I further certify that, on the date noted below, I caused to be mailed, by EPA internal mail (pouch), or hand delivery, the original and a copy of this "**Consent Agreement and Final Order**" to:

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

Dated: 10/16/17

Marie St Germain

Marie St. Germain
Print Name

Branch Secretary
Title