

BEFORE THE UNITED STATES  
 ENVIRONMENTAL PROTECTION AGENCY  
 Region III  
 1650 Arch Street  
 Philadelphia, Pennsylvania 19103-2029

REGIONAL HEARING OFFICE  
 EPA REGION III, PHILADELPHIA  
 2015 JUN 8 PM 4:58

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In The Matter of	)	
	)	
City of DuBois	)	
16 W. Scribner Avenue	)	
DuBois, PA 15801,	)	Proceeding to Assess Class I Penalty
	)	Under Section 309(g)(2)(A) of the Clean
Respondent.	)	Water Act, 33 U.S.C. § 1319(g)(2)(A)
	)	
Facility:	)	
	)	Docket No. CWA-03-2015-0122
City of Dubois Publically Owned	)	
Treatment Works	)	
16 West Scribner Avenue	)	
DuBois, Pennsylvania 15801.	)	<b>CONSENT AGREEMENT AND</b>
	)	<b>FINAL ORDER</b>

**I. STATUTORY AUTHORITY**

1. This Consent Agreement and Final Order ("CAFO") is entered into by the Director, Water Protection Division, United States Environmental Protection Agency, Region III ("Complainant"), and City of DuBois ("Respondent"), pursuant to Section 309(g) of the Clean Water 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 ("Consolidated Rules"), 40 C.F.R. Part 22. The authority to settle this matter has been delegated to the Regional Administrator and further delegated to the Division Director of the Water Protection Division. The parties have agreed to settlement of violations of the Clean Water Act by Respondent. This CAFO simultaneously commences and concludes this action pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) & (3).
  
2. Pursuant to Section 309(g)(2)(A) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g)(2)(A), and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, any person violating the CWA is liable for an administrative penalty under Section 309(g) of the Act, in an amount not to exceed \$11,000 per day for each day of violation, up to a total penalty amount of \$37,500.

## **II. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS AND CONCLUSIONS OF LAW**

3. Respondent is the owner and operator of the City of Dubois Publically Owned Treatment Works ("POTW") located at 16 West Scribner Avenue, DuBois, Pennsylvania ("Facility"), and a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
4. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342 and the requirements of the pretreatment program in section 307 of the Act, 33 U.S.C. § 1347.
5. Section 307(b)(1) of the Act, 33 requires EPA to establish pretreatment standards for the introduction of pollutants into treatments works which are publically owned for those pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works.
6. EPA promulgated pretreatment standards published at 40 C.F.R. Part 403.
7. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States.
8. The NPDES program was delegated by EPA to the Commonwealth of Pennsylvania ("Commonwealth"), however; the pretreatment program was not delegated and EPA retains jurisdiction for that program.
9. On October 9, 2006, the Commonwealth issued the NPDES Permit PA0027375 ("Permit") to Respondent. The Permit became effective on November 1, 2006. Although the Permit included an expiration date of October 31, 2011, pursuant to the terms of the Permit, the Commonwealth administratively extended it. At all times relevant to the claims identified in this CAFO, discharges from the Facility were subject to specific terms and conditions as prescribed in the Permit, including requirements for the acceptance and pretreatment of waste water at the Facility from a number of Industrial Users.
10. "Industrial User" is defined in 40 C.F.R. § 403.3(j) as a source of Indirect Discharge.
11. "Indirect Discharge" is defined in 40 C.F.R. § 403.3(i) as the introduction of any pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the Act.
12. Respondent identified in its annual pretreatment reports Beaver Meadow Creamery, Paris Cleaners and Sensus Metering as Significant Industrial Users of the Facility pursuant to 40 C.F.R. § 403.3(b).

13. "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.
14. Discharges from the Facility flow to the Sandy Lick Creek which is a "water of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. §§ 232.2 and 122.2.
15. Section C.I.4.A of the Permit requires Respondent, among other things, to operate and implement the industrial pretreatment program in accordance with the CWA and the regulations at 40 C.F.R. Part 403.

#### Count 1: Failure to Issue Permits

16. Section C.I.4.A of the Permit and the regulations at 40 C.F.R. § 403.8(f)(1)(iii) require Respondent to control, by permit, order or other means the contribution to the POTW by each Industrial User to ensure compliance with applicable Pretreatment standards and requirements. In the case of Industrial Users identified as significant under § 403.3(v) this control must be achieved through individual permits or equivalent individual control mechanisms issued to each such User. 40 C.F.R. § 403.8(f)(1)(iii).
17. Respondent issued individual permits as control mechanisms to Paris Cleaners, Inc. and Beaver Meadow Creamery in April 1996 which both included a termination date of April 1, 2001.
18. Respondent did not issue new individual control mechanisms to Paris Cleaners and Beaver Meadow Creamery until February 1, 2012, ten years and ten months after the April 1, 2001 permit expiration date.
19. Respondent issued an individual permit as the control mechanism to Sensus Metering in August 2003 with a termination date of August 1, 2008.
20. Respondent did not issue a new individual control mechanism to Sensus Metering until February 1, 2012, three years and six months after the August 1, 2008 permit expiration date.
21. Respondent's failure to issue new individual control mechanisms prior to the expiration dates of the permits as described above violates the Permit which requires compliance with 40 C.F.R. § 403.8(f)(1)(iii), and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### Count 2: Failure to Sample and Inspect Industrial User Effluent

22. Section C.I.4.A of the Permit and the regulation at 40 C.F.R. Section 403.8(f)(2)(v) require Respondent to inspect and sample the effluent from each Significant Industrial User of the system at least once a year, with certain exceptions not relevant here.

23. Respondent failed to inspect and sample the effluent from the Beaver Meadow Creamery in 2012.
24. Respondent's failure to conduct the required inspection and sampling of the effluent from the Beaver Meadow Creamery violated the Permit which requires compliance with 40 C.F.R. § 403.8(f)(2)(v) and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 3: Failure to Conduct Monitoring

25. Section C.I.4.B.7 of the Permit requires Respondent to conduct monitoring at its Facility that, at a minimum, includes quarterly influent, effluent and sludge analysis for all local limits parameters, and an annual priority pollutant scan for influent and sludge.
26. Pursuant to Section C.I.4.B.5 of the Permit, Respondent is required to submit the analytical results of such monitoring to EPA annually.
27. To date, Respondent failed to submit to EPA sample results of the Facility influent for free cyanide, which is included in the local limits, for one of the required four quarters of 2010.
28. To date, Respondent has failed to submit to EPA annual sample results of the Facility sludge for total cyanide, a priority pollutant in 2010, for calendar year 2010.
29. To date, Respondent has failed to submit to EPA sample results of the Facility influent and sludge for one of the four required quarters for all local limits pollutants for 2011.
30. To date, Respondent has failed to submit to EPA analytical results of the Facility effluent for Arsenic (As), Mercury (Hg), Free Cyanide (CN), Chloroform, Bis (2-ethylhexyl) Phthalate, and Di-N-Butyl Phthalate for one of the required four quarters for 2011.
31. To date, Respondent has failed to submit to EPA analytical results of the Facility sludge for free cyanide, which has a local limit, for one of the four required quarters for 2012 and 2013.
32. Respondent's failure, as described above, to perform the required sampling and analysis at its Facility and/or failure to provide to EPA analytical results demonstrating that it conducted the required sampling and analyses at its Facility violated Section C.I.4.B of the Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 4: Failure to Adopt New EPA Pretreatment Rules

33. Section C.I.4.A of the Permit and the regulations at 40 C.F.R. § 403.8(f)(1) require POTWs to operate pursuant to legal authority enforceable in Federal, State, or local courts, which authorizes or enables the POTW to apply and enforce the requirements of, among other things, 40 C.F.R. Part 403. Such authority, as provided in 40 C.F.R. § 403.8(f)(1), may be contained in an ordinance.

34. The regulations at 40 C.F.R. § 403.8(f)(5) require Respondent to develop and implement an enforcement response plan containing detailed procedures indicating how it will investigate and respond to instances of industrial user noncompliance.
35. Section C.I.4.E of the Permit provides that EPA may require Respondent, among other things, to submit for approval changes to its pretreatment program if Federal requirements change.
36. EPA promulgated amended pretreatment rules on October 14, 2005 and published the amended rules in the Code of Federal Regulations at 40 C.F.R. Part 403.
37. EPA notified Respondent in letters dated June 19, 2007, July 22, 2009 and September 22, 2009 that changes to Respondent's approved pretreatment program would be necessary in response to EPA's October 2005 amended regulations.
38. On February 2, 2010 Respondent submitted draft revisions to its ordinance.
39. On December 7, 2010 EPA provided detailed comments with additional required changes to the ordinance and the Enforcement Response Plan necessary to address EPA's 2005 regulatory amendments.
40. EPA subsequently sent letters on December 8, 2010, November 14, 2011, May 31, 2012, August 6, 2013, and August 5, 2014 reminding Respondent of the need to revise its draft ordinance and Enforcement Response Plan.
41. Respondent failed to adopt a new ordinance establishing its legal authority to enforce the October 2005 EPA amendments to 40 C.F.R. Part 403 until February 2015 and failed to amend its Enforcement Response Plan as required to address such amendments.
42. Respondent's failure to adopt a new ordinance and amend its Enforcement Response Plan as described above is a violation of Section C.I.4.A of the Permit which requires compliance with 40 C.F.R. § 403.8(f), and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 5: Failure to Publish List of Significant Non-compliers

43. Section C.I.4.A of the Permit and the regulations at 40 C.F.R. § 403.8(f)(2)(viii) require Respondent to provide annual public notification in a newspaper of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW of Industrial Users which, at any time during the previous 12 months, were in significant noncompliance with applicable Pretreatment requirements.
44. The regulations at 40 C.F.R. § 403.8(f)(2)(viii) provide that a Significant Industrial User is in significant non-compliance if its violation meets one or more of the criteria established in 40 C.F.R. § 403.8(f)(2)(viii)(A) through (H).

45. In documents submitted to EPA with Respondent's Annual Pretreatment Report for 2012, Respondent identified Paris Cleaners as a significant non-complier.
46. Respondent failed to publish in any newspaper in 2013 the Paris Cleaner Company as a significant non-complier for 2012.
47. Respondent's failure to publish in any newspaper a list of 2012 significant non-compliers in 2013 is a violation of Section C.I.4.A of the Permit which requires compliance with 40 C.F.R. § 403.8(f)(2)(viii), and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

### **III. CONSENT AGREEMENT AND FINAL ORDER**

48. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law set forth in Section II, above, and waives any defenses it might have as to jurisdiction and venue.
49. Respondent admits the jurisdictional allegations in the CAFO and agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.
50. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and consents to issuance of this CAFO without adjudication.
51. Respondent shall bear its own costs and attorney fees.
52. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.
53. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.
54. 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(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order. In addition, pursuant to Section 309(g)(1)(A), EPA has consulted with the Pennsylvania Department of the Environment ("PADEP") regarding this action, and will mail a copy of this document to the appropriate Pennsylvania official.
55. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA HEREBY ORDERS AND Respondent HEREBY CONSENTS to pay a civil penalty in the amount of ten thousand dollars (\$10,000) in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.

56. Respondent shall pay an administrative civil penalty of ten thousand dollars (\$10,000) for the violations alleged in this CAFO within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c), by mailing a cashier's check or certified check for the penalty to "Treasurer, United States of America":

By regular mail:

Regional Hearing Clerk  
U.S. EPA Region III  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

By overnight delivery:

U.S. Bank, Government Lock Box 979077  
US EPA Fines and Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
314-418-1028

By Wire Transfer:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read:

"D 68010727 Environmental Protection Agency"

By Automated Clearinghouse (ACH):

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 - checking  
Physical location of US Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737

57. Respondent shall send notice of such payment, including a copy of the check, to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk (3RC00)  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

-and-

Judith R. Hykel  
Mail Code 3RC20  
Office of Regional Counsel  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

58. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251, et seq., or any regulations promulgated thereunder.

59. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondents' failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondents. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

60. This Consent Agreement and Final Order resolve only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person,



including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. §§ 301 et seq., the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

61. Nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondents' violation of any applicable provision of law.
62. The penalty specified above, represents civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.
63. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in this CAFO, if the EPA obtains evidence that the information and/or representations of the Respondent are false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.
64. The undersigned representative of Respondent certifies that he/she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.
65. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

#### **IV. EFFECTIVE DATE**

66. Pursuant to 40 C.F.R. § 22.45, this CAFO shall be issued after a 40-day public notice period has concluded. This CAFO will become final thirty (30) days after issuance, 33 U.S.C. § 1319(g)(4), and will become effective on that same date, 40 C.F.R. § 22.31(b).

FOR RESPONDENT, CITY OF DUBOIS

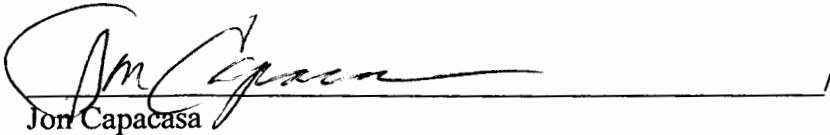
By: Gary D. Gilbert

Name: Gary D. Gilbert

Title: Mayor - City of DuBois

Date: March 19, 2015

It is so Ordered:

A handwritten signature in black ink, appearing to read "Jon Capacasa", is written over a horizontal line. The signature is fluid and cursive, with a large initial "J" and "C".

Jon Capacasa  
Director, Water Protection Division