



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

JAN 17 2008

CERTIFIED MAIL 7005 3110 0003 6266 0820  
RETURN RECEIPT REQUESTED

The Honorable Steve Carver  
Mayor, Town of Wagener  
P.O. Box 400  
Wagener, South Carolina 29164

Re: Consent Agreement and Final Order  
Docket No. CWA-04-2008-4501(b)  
Town of Wagener, South Carolina

Dear Mayor Carver:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order that has been finalized by the Environmental Protection Agency and the Regional Judicial Officer. Please make note of the provisions under Paragraph IV. Payment.

Should you have any questions or problems, please contact Ms. Amanda Driskell at (404) 562-9735.

Sincerely,

A handwritten signature in black ink that reads "Douglas F. Mundrick".

Douglas F. Mundrick, P.E.  
Chief  
Water Programs Enforcement Branch  
Water Management Division

Enclosure

cc: South Carolina Department of Health  
and Environmental Control

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF

Town of Wagener  
P.O. Box 400  
Wagener, SC 29164

NPDES Permit No. SC0026204

Respondent

CONSENT AGREEMENT AND  
FINAL ORDER

Docket No. CWA-04-2008-4501(b)

RECEIVED  
EPA REGION 4  
2009 JAN 17 11:31  
BARBARA LEM

**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), codified at 40 Code of Federal Regulations ("C.F.R.") Part 22 ("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 delegated this authority to the Director of the Water Management Division, who in turn has delegated this authority to the Chief of the Water Programs Enforcement Branch of EPA Region 4 ("Complainant").

**II. Allegations**

3. At all times relevant to this action, the Town of Wagener ("Respondent"), was a municipality duly organized and existing under the laws of the State of South Carolina and, therefore, is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At all times relevant to this action, Respondent owned and/or operated a wastewater treatment plant located in the Town of Wagener, Wagener, South Carolina, operating under National Pollutant Discharge Elimination System ("NPDES") Permit Number SC0026204 ("Permit").

5. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical, and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. Part I, Section A(1) of the Permit includes both chronic and acute whole effluent toxicity ("WET") limits and requires the Respondent to conduct toxicity tests to determine compliance with those limitations in accordance with Part IV of the Permit.

7. Toxicity tests conducted by the Respondent for April 2006, the results of which were submitted as part of the Respondent's monthly Discharge Monitoring Reports ("DMRs") to EPA, revealed the effluent to be toxic to *Ceriodaphnia dubia* in violation of the acute WET limit in the Permit. As particularly set forth in the Permit, the acute WET limit requires that there be a percent mortality less than 50% in the 100% effluent concentration. However, the percent mortality reported by the permittee for this month was 90% in the 100% effluent concentration, and thus outside the acceptable range of the Permit.

8. Toxicity tests conducted by the Respondent for August 2006, the results of which were submitted as part of the Respondent's monthly DMRs to EPA, revealed the effluent to be toxic to *Pimephales promelas* in violation of the chronic WET limit in the Permit. As particularly set forth in the Permit, the chronic WET limit requires that the inhibition concentration causing a 25% reduction in survival, reproduction, and/or growth of the test organisms, as compared to the control group, shall be greater than 32% effluent concentration. However, the inhibition concentration causing a 25% reduction in survival, reproduction, and/or growth of the test organisms, as compared to the control group, reported by the permittee for this month was less than 32% effluent concentration, and thus outside the acceptable range of the Permit.

9. Toxicity tests conducted by the Respondent for September 2006, the results of which were submitted as part of the Respondent's monthly DMRs to EPA, revealed the effluent to be toxic to *Pimephales promelas* in violation of the acute WET limit in the Permit. As particularly set forth in the Permit, the acute WET limit requires that there be a percent mortality less than 50% in the 100% effluent concentration. However, the percent mortality reported by the permittee for this month was 100% in the 100% effluent concentration, and thus outside the acceptable range of the Permit.

10. Toxicity tests conducted by the Respondent for December 2006, the results of which were submitted as part of the Respondent's monthly DMRs to EPA revealed the effluent to be toxic to *Ceriodaphnia dubia* in violation of the acute and chronic WET limits in the Permit. As particularly set forth in the Permit, the acute WET limit requires that there be a percent mortality less than 50% in the 100% effluent concentration. However, the percent mortality reported by the permittee for the first test conducted for this month was 90% in the 100% effluent concentration and the percent mortality

reported by the permittee for the third test conducted for this month was 100% in the 100% effluent concentration, and thus outside the acceptable range of the Permit. As particularly set forth in the Permit, the chronic WET limit requires that the inhibition concentration causing a 25% reduction in survival, reproduction, and/or growth of the test organisms, as compared to the control group, shall be greater than 32% effluent concentration. However, the inhibition concentration causing a 25% reduction in survival, reproduction, and/or growth of the test organisms, as compared to the control group, reported by the permittee for this month was less than 32% effluent concentration for the first test conducted, and thus outside the acceptable range of the Permit.

11. Toxicity tests conducted by the Respondent for December 2006, the results of which were submitted as part of the Respondent's monthly DMRs to EPA revealed the effluent to be toxic to *Pimephales promelas* in violation of the acute and chronic WET limits in the Permit. As particularly set forth in the Permit, the acute WET limit requires that there be a percent mortality less than 50% in the 100% effluent concentration. However, the percent mortality reported by the permittee for the first test conducted for this month was 100% in the 100% effluent concentration, and thus outside the acceptable range of the Permit. As particularly set forth in the Permit, the chronic WET limit requires that the inhibition concentration causing a 25% reduction in survival, reproduction, and/or growth of the test organisms, as compared to the control group, shall be greater than 32% effluent concentration. However, the inhibition concentration causing a 25% reduction in survival, reproduction, and/or growth of the test organisms, as compared to the control group, reported by the permittee for this month was less than 32% effluent concentration for the first test conducted, and thus outside the acceptable range of the Permit.

12. Toxicity tests conducted by the Respondent for June 2007, the results of which were submitted as part of the Respondent's monthly DMRs to EPA revealed the effluent to be toxic to *Ceriodaphnia dubia* in violation of the chronic WET limits in the Permit. As particularly set forth in the Permit, the chronic WET limit requires that the inhibition concentration causing a 25% reduction in survival, reproduction, and/or growth of the test organisms, as compared to the control group, shall be greater than 32% effluent concentration. However, the inhibition concentration causing a 25% reduction in survival, reproduction, and/or growth of the test organisms, as compared to the control group, reported by the permittee for the first, second, and third tests conducted this month was less than 32% effluent concentration, and thus outside the acceptable range of the Permit.

13. Toxicity tests conducted by the Respondent for August 2007, the results of which were submitted as part of the Respondent's monthly DMRs to EPA revealed the effluent to be toxic to *Ceriodaphnia dubia* in violation of the chronic WET limit in the Permit. As particularly set forth in the Permit, the chronic WET limit requires that the inhibition concentration causing a 25% reduction in survival, reproduction, and/or growth of the test organisms, as compared to the control group, shall be greater than 32% effluent concentration. However, the inhibition concentration causing a 25% reduction in survival, reproduction, and/or growth, as compared to the control group, reported by the

permittee for the test conducted this month was less than 32% effluent concentration, and thus outside the acceptable range of the Permit.

14. Part I, Section A(2) of the Permit includes ammonia nitrogen limits and requires the Respondent to conduct analysis of the effluent for ammonia nitrogen concentration to determine compliance with those limits.

15. Ammonia nitrogen tests conducted by the Respondent for June 2007, the results of which were submitted as part of the Respondent's monthly DMRs to EPA, revealed the effluent to be in violation of the weekly average ammonia nitrogen limits in the Permit. As particularly set forth in the Permit, the weekly average ammonia nitrogen limit requires the average of the ammonia nitrogen tests in a calendar week not to exceed 10.5 mg/L (or 12 lbs/day) during the months of March through October. However, the weekly average ammonia nitrogen concentration reported by the permittee during this month was 10.8 mg/L (4.86 lbs/day), and thus outside the acceptable range of the Permit.

16. Therefore, the Respondent has violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a) and the Permit, issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, in that the Respondent failed to comply with the WET limits and ammonia nitrogen limits of the Permit as set forth herein.

### **III. Stipulations and Findings**

17. 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, 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.

18. 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.

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

20. 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.

21. 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.

22. 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 EPA.

23. 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**

24. 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, EPA has determined that one thousand dollars (\$1,000) is an appropriate civil penalty to settle this action.

25. 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, MO 63197-9000

26. 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, GA 30303-8960

and

Ms. Mary Mattox  
U.S. Environmental Protection Agency, Region 4  
Water Management Division  
Water Programs Enforcement Branch  
Gulf Enforcement Section  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960

27. The penalty amount specified in Paragraph 24 above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

28. Pursuant to 40 C.F.R. Parts 13 and 31 U.S.C. § 3717 et seq., if EPA does not receive payment of the penalty assessed by this CA/FO in full by its due date, interest shall accrue on the unpaid balance from the due date through the date of payment at an annual rate equal to the rate of the current value of funds to the United States Treasury as prescribed and published by the Secretary of the Treasury. If all or part of the payment is overdue, EPA will assess a late-payment handling charge of \$15.00, with an additional delinquent notice charge of \$15.00 for each subsequent thirty (30) day period. EPA will also assess on a monthly basis an up to six percent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date.

29. 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 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 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**

30. 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.

31. 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.

32. 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. Except as otherwise set forth herein, compliance with this CA/FO shall resolve the allegations of violations contained 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, 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.

33. 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.

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

35. 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.

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

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

For Complainant:

William Bush  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8960  
(404) 562-9538

For Respondent:

The Honorable Steve Carver  
Town of Wagener  
P.O. Box 400  
Wagener, SC 29164  
(803) 564-3412

38. 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.

39. 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 South Carolina was provided prior opportunity to consult with Complainant regarding this matter.

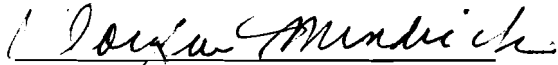


**VI. Effective Date**

40. 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 COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:



Douglas F. Mundrick, P.E., Chief  
Water Programs Enforcement Branch  
Water Management Division  
U.S. EPA, Region 4

Date: 11/30/07

For RESPONDENT:



Steve Carver, Mayor  
Town of Wagener

Date: 11/16/07

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF

Town of Wagener  
P.O. Box 400  
Wagener, SC 29164

NPDES Permit No. SC0026204

Respondent

CONSENT AGREEMENT AND  
FINAL ORDER

Docket No. CWA-04-2008-4501(b)

**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: January 16, 2008

Susan B. Schub  
Susan B. Schub  
Regional Judicial Officer

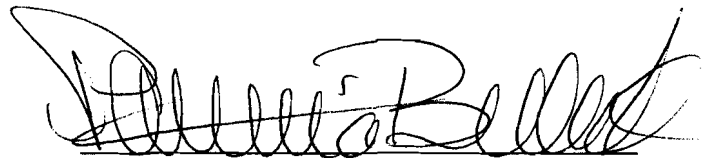
**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of **Town of Wagener, South Carolina**, Docket No. **CWA-04-2008-4501(b)** (filed with the Regional Hearing Clerk on **JAN 17 2008** \_\_\_\_, 2008) was served on **JAN 17 2008**, 2008, in the manner specified to each of the persons listed below.

**By hand-delivery:** William Bush  
Associate Regional Counsel  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

**By certified mail,  
return receipt requested:** The Honorable Steve Carter  
Mayor, Town of Wagener  
P.O. Box 400  
Wagener, South Carolina 29164

Mr. David Wilson, Chief  
Bureau of Water  
South Carolina Department of Health  
and Environmental Control  
2600 Bull Street  
Columbia, South Carolina 29201



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

**EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM**

**TO BE COMPLETED BY THE ORIGINATING OFFICE:**

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Mary Mattox on 11/29/07  
(Name) (Date)

in the WMD/WPEB/GES at (404) 562- 9733  
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree  
USAO COLLECTS

Administrative Order/Consent Agreement  
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree  
DOJ COLLECTS

Oversight Billing - Cost Package required:  
Sent with bill

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: Town of WAgeneel, SC  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 1,000  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CWA-04-2008-4501(b)

The Site Specific Superfund Account Number: \_\_\_\_\_

WMD

The Designated Regional/Headquarters Program Office: \_\_\_\_\_

**TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

The IFMS Accounts Receivable Control Number is: \_\_\_\_\_ Date \_\_\_\_\_

**DISTRIBUTION:**

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- |  |                              |
|--|------------------------------|
| 1. Debt Tracking Officer<br>Environmental Enforcement Section<br>Department of Justice RM 1647<br>P.O. Box 7611, Benjamin Franklin Station<br>Washington, D.C. 20044 | 2. Originating Office (EAD)  |
|  | 3. Designated Program Office |

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- |                           |                              |
|---------------------------|------------------------------|
| 1. Originating Office     | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD)    |