

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)	Docket No. CWA-05-2022-0002
)	
Pleasantview Utilities, Inc.)	Proceeding to Assess a Class II Civil
3812 West Galaxy Drive)	Penalty under Section 309(g) of the Clean
Connersville, Indiana 47331)	Water Act, 33 U.S.C. § 1319(g)
)	
for the Pleasantview Utilities)	
Wastewater Treatment Plant)	
)	
Respondent.)	

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 309(g) of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. § 1319(g), and Sections 22.13(b) and 22.18(b)(2)-(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(3).

2. The Complainant is, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division, EPA Region 5, U.S. Environmental Protection Agency (“EPA”), Region 5.

3. Respondent is Pleasantview Utilities, Inc., also known as Pleasant View Utilities, Inc., a corporation, the owner/operator of Pleasantview Utilities Wastewater Treatment Plant, in Connersville, Indiana.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (“CAFO”). *See* 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO including, but not limited to, its right to request a hearing under 40 C.F.R. § 22.15(c) and Sections 309(g)(2)(B) and (4)(C) of the CWA, 33 U.S.C. § 1319(g)(2)(B) and (4)(C); its right to appellate review under Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B); its right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06; any right to contest the allegations in this CAFO; and its right to appeal this CAFO. Respondent also consents to the issuance of this CAFO without further adjudication.

Statutory and Regulatory Background

9. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters except in compliance with, *inter alia*, a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

10. Section 502(5) of the CWA defines a “person” as “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.” 33 U.S.C. § 1362(5).

11. Section 502(6) of the CWA defines “pollutant,” as “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6).

12. Section 502(12) of the CWA defines “discharge of a pollutant,” as, *inter alia*, “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).

13. Section 502(14) of the CWA defines “point source” as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

14. Section 502(7) of the CWA defines “navigable waters” as “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).

15. “Waters of the United States,” as defined in 40 C.F.R. § 120.2 (2020), includes waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, and tributaries to such waters.

16. Section 402(a) of the CWA, 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 navigable waters. Any such discharge is subject to the specific terms and conditions

prescribed in the applicable permit, and a violation of a NPDES permit is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

17. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the NPDES program under which EPA and, upon receiving authorization from EPA, a state may permit discharges into navigable waters, subject to specific conditions. A violation of a NPDES permit is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

18. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the State of Indiana requested approval from EPA to administer its own permit program for discharges into navigable waters within Indiana, and such approval was granted by EPA on January 1, 1975, 40 Fed. Reg. 4,033 (Jan. 27, 1975). Therefore, pursuant to the State's permit program, the Indiana Department of Environmental Management ("IDEM") has issued IDEM NPDES permits.

19. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator to assess a Class II civil penalty under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), after consultation with the State in which the violation occurs, when the Administrator finds, on the basis of any information available, that a person has violated Section 301 of the CWA, 33 U.S.C. § 1311, which includes discharges not in compliance with a permit under Section 402 of the CWA, 33 U.S.C. § 1342.

Factual Allegations and Alleged Violations

20. Respondent is a corporation and is a "person" under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

21. At all times relevant to this Order, Respondent owned and/or operated the Pleasantview Utilities Wastewater Treatment Plant ("facility"), in Connerville, Indiana.

22. IDEM issued permit IN0044776 (“Permit”) under Section 402 of the CWA, 33 U.S.C. § 1342, to Respondent for discharge of, among other pollutants, nitrogen, ammonia total (as N), total suspended solids, total residual chlorine, and *E.coli* from Outfall 001 at the facility to an unnamed tributary that drains to Williams Creek.

23. The pollutants nitrogen, ammonia total (as N), total suspended solids, total residual chlorine, and *E.coli* discharged into an unnamed tributary that drains to Williams Creek are “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), because they include one or more of the following: dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste.

24. At all relevant times, the facility acted as a “point source” of a “discharge” of “pollutants” with its wastewater discharging into an unnamed tributary that drains to Williams Creek, then to the Whitewater River, then to the Great Miami River, then to the Ohio River, which are considered navigable waters as that term is defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and “waters of the United States” as defined in 40 C.F.R. § 120.2 (2020).

Count 1: Unlawful Discharge (Bypass) of Pollutants into an Unnamed Tributary to Williams Creek

25. The statements in Paragraphs 1 through 24 are hereby incorporated by reference as if set forth in full.

26. On February 19-20, 2019, Outfall No. 001 discharged partially treated sanitary sewage into Williams Creek. On February 25, 2019, EPA inspected the facility to evaluate compliance with the CWA. During the inspection, EPA inspectors observed evidence of a

treatment bypass of the treatment plant headworks, aeration treatment, and clarifier. The operator-in-charge confirmed that the overflow bypassed primary treatment, the aeration tank and clarifier, and that the overflow occurred “a couple days ago” and “was the first overflow in years,” adding that it was the result of a “five-inch rain.” The operator-in-charge also confirmed that the overflow was not reported to IDEM. EPA obtained climate records from four of the closest weather stations reporting to the National Weather Service (Alpine, IN, Shelbyville, IN; Dayton, OH; Cincinnati, OH), and the only significant rain event reported at all four stations within the ten-day period prior to the inspection occurred on February 20, 2019. The reported rainfall amount at the four stations for February 20 ranged from 1.07 inches (Shelbyville) to 1.48 inches (Cincinnati). Alpine, IN, the closest station to the facility (approximately 6 miles), reported 1.21 inches of rain on February 20, 2019. The Alpine station reported 13 days with rainfall exceeding 1.21 inches in the year preceding the inspection, ranging from 1.3 to 2.82 inches.

27. Respondent was issued permit IN0044776 under Section 402 of the CWA, 33 U.S.C. § 1342, by IDEM, and which became effective on November 1, 2016.

28. Part II.B.2 of the Permit states that bypasses are prohibited unless certain conditions are met, including submitting timely notice (orally within 24 hours of event, and written within 5 days of event), as required under Permit Part II.B.2.d..

29. At no time relevant to the discharge described in paragraph 26 did Respondent have or apply for a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, allowing for a bypass of treatment and the discharge of partially treated sewage into an unnamed tributary that drains to Williams Creek, without submitting timely notice to IDEM.

30. Therefore, Respondent is a person who discharged pollutants from a point source into navigable waters, without a permit, in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

Count 2: Effluent Limit Violations

31. Respondent was issued permit IN0044776 under Section 402 of the CWA, 33 U.S.C. § 1342, by IDEM, and which became effective on November 1, 2016. At all relevant times, the Respondent was authorized to discharge pollutants from Outfall 001 at the facility to waters of the United States only in compliance with the specific terms and conditions of the Permit.

32. The pollutants nitrogen, ammonia total (as N), total suspended solids, total residual chlorine, and *E.coli* discharged into an unnamed tributary that drains to Williams Creek are “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

33. Part I.A of the Permit establishes effluent limitations and monitoring requirements for nitrogen, ammonia total (as N), total suspended solids, total suspended solids percent removal, dissolved oxygen, total residual chlorine, and *E.coli*. Because Respondent owned or operated a facility with an outfall that acted as a point source for the discharge of pollutants to navigable waters, Respondent and the facility have been subject to the CWA and the NPDES program at all times relevant to this Order. Thus, any such discharge has been and is subject to the specific terms and conditions prescribed in the Permit.

34. Therefore, Respondent is a person who discharged pollutants from a point source into navigable waters, in violation of its permit, in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

35. Through evaluation of discharge monitoring reports (“DMRs”) submitted to IDEM, EPA identified 148 occasions from August 31, 2016 through May 31, 2021, where Respondent discharged pollutants from Outfall 001 that exceeded the applicable effluent limits in the Permit, in violation of Part I.A of the Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

36. Each violation of the conditions of the Permit or regulations described above is a violation of Section 301 of the Act, 33 U.S.C. § 1311.

Civil Penalty

37. Under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, the Administrator may assess a Class II civil penalty of up to \$22,584 per day of violation up to a total of \$282,293, for violations of the CWA that occurred after November 2, 2015 and for which penalties are assessed on or after January 13, 2020, or other amounts as penalty levels may be later adjusted at 40 C.F.R. Part 19.

38. Based upon the facts alleged in this CAFO, and upon the nature, circumstances, extent and gravity of the violations alleged, as well as Respondent’s ability to pay, prior history of such violations, degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$23,250. This is based on the nature, extent and gravity of the violations alleged, review of financial information provided by Respondent, and analysis of Respondent’s ability to pay the appropriate penalty.

39. Within 30 days after the effective date of this CAFO, Respondent must pay the \$23,250 civil penalty by either:

For checks sent by regular U.S. Postal Service mail, sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Or for on-line payment, go to www.pay.gov. Use the Search Public Forms option on the tool bar and enter SFO 1.1 in the search field. Open the form and complete the required fields.

40. A transmittal letter, stating Respondent's name, complete address, and the case docket number must accompany the payment. Respondent must write the case docket number on the face of the check and send copies of the check and transmittal letter (or copies of proof of the electronic payment) to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard (E-19J)
Chicago, Illinois 60604-3590

Dean Maraldo (ECW-15J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Cynthia King (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

41. This civil penalty is not deductible for federal tax purposes.

42. If Respondent does not timely pay the civil penalty, Complainant may request the United States Department of Justice bring a civil action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States'

enforcement expenses for the collection action. Respondent acknowledges that the validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

43. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established pursuant to 26 U.S.C. § 6621(a)(2); 31 U.S.C. § 3717. In addition to the assessed penalty and interest, Respondent must pay the United States' attorneys fees and costs for collection proceedings, and Respondent must pay a nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 20 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. *See* 33 U.S.C. § 1319(g)(9).

General Provisions

44. The parties consent to service of this CAFO by email at the following valid email addresses: king.cynthia@epa.gov (for Complainant) and msherck@co.fayette.in.us (for Respondent).

45. Full payment of the penalty as described in paragraphs 38 and 39 and full compliance with this CAFO shall not in any case affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

46. As provided under 40 C.F.R. § 22.18(c), full payment of the penalty as described in paragraphs 38 and 39 and full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for the particular violations alleged in this CAFO.

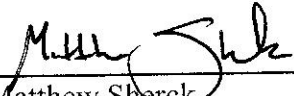
47. This CAFO does not affect Respondent's responsibility to comply with the CWA and other applicable federal, state, or local laws, regulations, or permits.
48. Respondent certifies that it is complying with Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342.
49. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31 and the EPA's Interim Clean Water Act Settlement Penalty Policy (Mar. 1995).
50. The terms of this CAFO bind Respondent and its successors and assigns.
51. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to the terms of this CAFO.
52. Each party agrees to bear its own costs and attorney's fees in this action.
53. This CAFO constitutes the entire agreement between the parties.
54. Unless an appeal is filed in accordance with Sections 309(g)(4)(C) and 309(g)(8) of the CWA, 33 U.S.C. §§ 1319(g)(4)(C), (8), or 40 C.F.R. § 22.45, this CAFO is effective 30 days following issuance, which is the date the CAFO has been signed by the Regional Judicial Officer or Regional Administrator and is after completion of the notice and comment requirements of Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4) and 40 C.F.R. §§ 22.38, 22.45.

In the Matter of:

**Pleasantview Utilities, Inc.
3812 West Galaxy Drive
Connersville, Indiana 47331**

Docket No. CWA-05-2022-0002

Pleasantview Utilities, Inc., Respondent



Matthew Sherck
President
Pleasantview Utilities, Inc.

10/26/2021

Date

United States Environmental Protection Agency, Complainant

**Harris,
Michael**

Digitally signed by
Harris, Michael
Date: 2021.11.10
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Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division
U.S. EPA Region 5

Date

In the Matter of:

Pleasantview Utilities, Inc.

Docket No. CWA-05-2022-0002

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective 30 days following issuance, unless an appeal is filed in accordance with Sections 309(g)(4)(C) and 309(g)(8) of the CWA, 33 U.S.C. §§ 1319(g)(4)(C), (8), or 40 C.F.R. § 22.45. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

By:

Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Date:

Consent Agreement and Final Order
In the matter of: Pleasantview Utilities, Inc.
Docket No: **CWA-05-2022-0002**

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, docket number CWA-05-2022-0002, which was filed on _____, in the following manner to the following addressees:

Copy by E-mail to Respondent: Matthew Sherck
msherck@co.fayette.in.us

Copy by E-mail to Attorney for Complainant: Cynthia King
king.cynthia@epa.gov

Copy by E-mail to Regional Judicial Officer: Ann Coyle
coyle.ann@epa.gov

Dated _____

LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5