

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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PHILADELPHIA

In The Matter of:

Altoona City Authority
Westerly WWTP

Respondent

Proceeding to Assess Class I
Administrative Penalty Under
Section 309(g) of the Clean
Water Act

Docket No. CWA-03-2010-0293

**CONSENT AGREEMENT AND
FINAL ORDER**

I. PRELIMINARY STATEMENT AND 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 Altoona Water Authority (f/k/a "Altoona City Authority" and referred to herein as "Altoona" or "Respondent"), pursuant to Section 309(g) of the Clean Water Act ("CWA" or "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 parties have agreed that this CAFO resolves Complainant's civil claims pertaining to violations of Section 301 of the CWA, 33 U.S.C. § 1311, alleged in an administrative Complaint filed on June 30, 2010.
2. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), 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. Violations occurring after March 15, 2004 through January 12, 2009 subject the violator to civil penalties in an amount not to exceed \$11,000 per day for each day the violation continues, up to a total penalty amount of \$32,500; violations of the Act that occurred after January 12, 2009 subject the violator to civil penalties in an amount not to exceed \$16,000 per day for each day the violation continues, up to a maximum of \$37,500.

II. FINDINGS OF FACT AND JURISDICTIONAL ALLEGATIONS

3. Respondent neither admits nor denies the specific factual allegations contained in the administrative Complaint filed on June 30, 2010, Docket No. CWA-03-2010-0293.
4. Respondent admits the jurisdictional allegations contained in the Complaint.

III. CONCLUSIONS OF LAW

5. As described in the Findings of Fact and Jurisdictional Allegations referred to in Section II, above, Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311, and is therefore liable to the United States for a civil penalty in accordance with Section 309(g) of the Act, 33 U.S.C. § 1319(g).

IV. CONSENT AGREEMENT AND FINAL ORDER

6. Respondent agrees not to contest EPA's jurisdiction to issue and enforce the terms of this CAFO and Administrative Order for Compliance on Consent, EPA Docket No. CWA 03-2011-0050 (AOCC).
7. 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.
8. Each party to this action shall bear its own costs and attorney fees.
9. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.
10. The parties agree that settlement of this matter is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.
11. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the violations, 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 CONSENTS to pay a civil penalty in the amount of sixteen thousand two hundred and fifty dollars (\$16,250) in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.

12. Respondent shall pay the total administrative civil penalty of sixteen thousand two hundred and fifty dollars (\$16,250) 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). Payment shall be made by one of the following methods set forth below.

Payment by check to "United States Treasury"

By regular mail:

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

Contact Eric Volck (513-487-2105)

By overnight delivery:

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

Contact: Eric Volck (513-487-2105)

By Wire Transfer:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
(Field Tag 4200 of the wire transfer message should read:
"D 68010727 Environmental Protection Agency")

By Automated Clearinghouse (ACH) Transfers for receiving U. S. currency (also known as REX or remittance express):

PNC Bank
ABA = 051036706
Environmental Protection Agency
Account Number: 310006
CTX Format
Transaction Code 22 - checking
808 17th Street, NW
Washington, D.C. 20074

Contact for ACH: John Schmid (202-874-7026)

On Line Payments:

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV
Enter sfo 1.1 in the search field
Open form and complete required fields.

Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

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-

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

13. 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.

14. 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, Respondent's 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 Respondent. 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).

15. This Consent Agreement and the accompanying Final Order resolve only the civil claims for the specific violations alleged herein. Nothing in this CAFO is intended to, nor shall be construed to operate in any way to resolve any criminal liability of Respondent. Compliance with the Settlement shall not be a defense to any actions subsequently commenced for any violations of any other Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with all such laws and regulations. Nothing herein shall be construed to limit the authority of the Complainant to undertake such action against any person, including the Respondent, in response to any condition which Complainant 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 CWA, 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.

16. 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 Respondent's violation of any other applicable provision of law.
17. This CAFO is conditioned upon the accuracy of the Respondent's representations to EPA, including but not limited to Respondent's intent to comply with the AOCC. EPA reserves the right to institute a new and/or separate action should Respondent fail to comply with the terms of this CAFO or the AOCC. That 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.
18. The penalty specified above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.
19. Entry of this CAFO is a final settlement of all civil violations alleged in the Complaint. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in the Complaint 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.
20. The undersigned representative of Respondent certifies that he or 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.
21. 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.

V. EFFECTIVE DATE

22. This CAFO shall become final and effective, absent a petition for review, thirty (30) days after it is lodged with the Regional Hearing Clerk, pursuant to Section 309(g)(5), 33 U.S.C. § 1319(g)(5).

FOR RESPONDENT ALTOONA WATER AUTHORITY

By: William C. Geis

Name: William C. Geis

Title: Secretary

SO ORDERED, pursuant to 33 U.S.C. § 1319(g), and 40 C.F.R. Part 22,
this 4th day of April, 2011

Catherine A. Subey for

Jon M. Capacasa
Director, Water Protection Division
U.S. EPA Region III

CERTIFICATE OF SERVICE

I hereby certify that on this day, I caused to be filed with the **Regional Hearing Clerk**, EPA Region III, the original Consent Agreement and Final Order, EPA Docket No. CWA-03-2010-0293 and Administrative Order for Compliance on Consent, EPA Docket No. CWA 03-2011-0050 and that copies of these document were sent to the following individuals in the manner described below:

By hand delivery:

Regional Judicial Officer Renee Sarajian
EPA Region III
1650 Arch St.
Philadelphia, PA 19103

By first class, certified mail, return receipt requested:

Alan R. Krier, Esq.
Counsel for Altoona Water Authority
Jubelirer, Carothers, Krier & Halpern
Park View Center
10 Sheraton Drive
Altoona, PA 15501



Douglas Frankenthaler
Assistant Regional Counsel
US EPA Region III

Date: 4/4/11