



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 26 2013

CERTIFIED MAIL 7012 1010 0001 8097 1846
RETURN RECEIPT REQUESTED

The Honorable Thomas Gregg
Mayor
Town of Mosheim
Lick Creek Valley WWTP
1000 Main Street
Mosheim, Tennessee 37818

Re: Consent Agreement and Final Order
Docket No. CWA-04-2013-4514(b)
National Pollutant Discharge Elimination System Permit No.: TN0059366
Town of Mosheim, Tennessee

Dear Mayor Gregg:

Enclosed, please find a fully executed copy of the Consent Agreement and Final Order, finalized by the U.S. Environmental Protection Agency Region 4 and the Regional Judicial Officer. Please make note of the provisions under Paragraph IV. Payment.

Should you have any questions or concerns regarding this matter, please contact Ms. Alenda Johnson at (404) 562-9761 or via email at johnson.alenda@epa.gov. Legal inquiries should be directed to Ms. Michele Wetherington, Assistant Regional Counsel, at (404) 562-9613 or via email at wetherington.michele@epa.gov.

Sincerely,

Denisse D. Diaz, Chief
Clean Water Enforcement Branch
Water Protection Division

Enclosure

cc: Ms. Jessica Murphy
Tennessee Department of Environment and Conservation

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:

Town of Mosheim
Mosheim, Tennessee

Respondent.

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CONSENT AGREEMENT AND
FINAL ORDER

Docket No. CWA-04-2013-451 (b)

HEARING CLERK

2013 SEP 26 PM 1:52

RECEIVED
EPA REGION IV

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), and codified at 40 Code of Federal Regulations (“C.F.R.”) 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 redelegated this authority to the Director of the Water Protection Division, who in turn has delegated this authority to the Chief of the Clean Water Enforcement Branch of EPA Region 4 (“Complainant”).

II. Allegations

3. The Town of Mosheim, Tennessee (“Respondent”), is a municipality duly organized and existing under the laws of the State of Tennessee and, therefore, 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, the Respondent owned and/or operated the Lick Creek Valley Wastewater Treatment Plant (“WWTP”), located in Greene County at 420 Pottertown Road in Midway, Tennessee.

5. To accomplish the objectives 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 a National

Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes an NPDES Permit Program authorizing the EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants into navigable waters subject to specific terms and conditions. The EPA has granted the State of Tennessee through the Department of Environment and Conservation (“TDEC”) approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. The WWTP is operating under NPDES Permit No. TN0059366 (“Permit”), issued on April 30, 2011, and the Permit will expire on April 30, 2015.

8. The Permit requires the Respondent to properly operate and maintain all facilities and systems (and related appurtenances) for collection and treatment. The Permit also requires notification to the TDEC when there is a physical alteration or addition to the permitted facility that could significantly change the nature or increase the quantity of the pollutants discharged.

9. On August 29, 2012, the EPA conducted a Compliance Evaluation Inspection (“CEI”) of the WWTP to evaluate the Respondent’s compliance with the Permit and the CWA. The CEI identified deficiencies related to the operation and maintenance of facilities and systems for collection and treatment, including excessive algae growth on the final clarifiers, improperly preserved influent composite samples and inoperable sand filters.

10. On December 18, 2012, the EPA sent a Notice of Violation (“NOV”) letter, issued under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to the Respondent regarding the deficiencies identified during the inspection. The NOV also addressed effluent limits exceeded for pH, Total Suspended Solids, Total Nitrogen and E. Coli for the period covering January 1, 2009 through September 30, 2012. The NOV requested information on corrective actions planned or taken to address the deficiencies and effluent limit exceedances.

11. On December 21, 2012, the EPA received a response to the NOV from Steven Holzman, wastewater treatment plant manager for the Respondent. The response addressed all of the deficiencies identified in the NOV and stated that the Respondent was in the process of obtaining pricing for the sand filter repairs.

12. On May 22, 2013, a Show Cause Meeting was held with representatives of the Respondent, TDEC and the EPA to discuss the sand filters which have been out of operation for four years.

13. On June 13, 2013, the EPA finalized Administrative Order on Consent (“AOC”) No. CWA-04-2013-4757 with the Respondent, requiring the Respondent to repair the inoperable sand filters.

14. The Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and the Permit, by failing to comply with the operation, maintenance and effluent limitation requirements of the Permit.

III. Stipulations and Findings

15. 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, or 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.

16. 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.

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

18. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CA/FO.

19. 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.

20. The 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.

21. 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

22. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), and considering the nature of the violations and other relevant factors, the EPA has determined that Twenty Thousand Dollars (\$20,000) is an appropriate civil penalty to settle this action.

23. Respondent shall submit payment of the penalty specified in the preceding paragraph 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, Missouri 63197-9000

24. 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, Georgia 30303-8960

and

Ms. Mary Mattox
U.S. Environmental Protection Agency, Region 4
Water Protection Division
Clean Water Enforcement Branch
West NPDES Enforcement Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

25. The penalty amount specified in Paragraph 22 above shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of federal taxes.

26. 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 for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty per cent (20%) of the aggregate amount of such penalty and nonpayment penalty which are unpaid as of the 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

27. 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.

28. 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. The EPA shall not seek further corrective action for the violations alleged in this CA/FO, if the Respondent complies with the payment required under Section IV of this CA/FO.

29. 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. 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.

30. 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.

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

32. 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.

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

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

Michele Wetherington
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9613

For Respondent:

The Honorable Thomas Gregg
Mayor
Town of Mosheim
1000 Main Street
Mosheim, Tennessee 37818

35. 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.

36. 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 Tennessee was provided a prior opportunity to consult with Complainant regarding this matter.

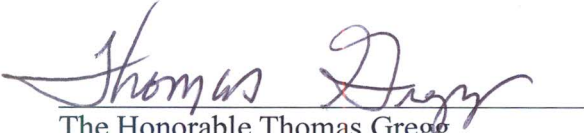
37. Effective upon signature of this CA/FO by Respondent, Respondent agrees that the time period commencing on the date of its signature and ending on the date the EPA receives from Respondent the payment required by this CA/FO shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the EPA related to the matters addressed in this CA/FO and that, in any action brought by the EPA related to the matters addressed, Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If EPA gives notice to Respondent that it will not make this CA/FO effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by the EPA.

VI. Effective Date

38. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

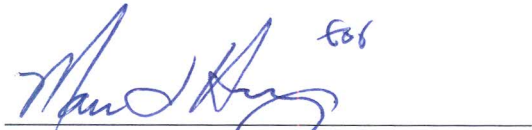
AGREED AND CONSENTED TO:

For RESPONDENT, TOWN OF MOSHEIM, TENNESSEE:


The Honorable Thomas Gregg
Mayor
Town of Mosheim, Tennessee

Date: 8-5-13

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:


Denise D. Diaz, Chief
Clean Water Enforcement Branch
Water Protection Division
U.S. EPA Region 4

Date: 9/26/13

IN THE MATTER OF:

Town of Mosheim
Mosheim, Tennessee

Respondent.

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) **CONSENT AGREEMENT AND**
) **FINAL ORDER**
)
)
) **Docket No. CWA-04-2013-4514(b)**
)
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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: Sept. 26. 2013

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 the Town of Mosheim, Tennessee, Docket No. CWA-04-2013-4514(b) (filed with the Regional Hearing Clerk on SEP 26 2013 2013), was served on SEP 26 2013 2013, in the manner specified to each of the persons listed below.

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

**By certified mail,
return receipt requested:** The Honorable Thomas Gregg
Mayor
Town of Mosheim
1000 Main Street
Mosheim, Tennessee 37818

Dr. Sandra Dudley
Director, Water Pollution Control
Tennessee Department of Environment and Conservation
401 Church Street, 6th Floor, L&C Annex
Nashville, Tennessee 37243 -0435



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