



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 18 2016

CERTIFIED MAIL 7015 1730 0002 0524 3570
RETURN RECEIPT REQUESTED

Drew Goddard
Bass, Berry & Sims PLC
150 Third Avenue South, Suite 2800
Nashville, Tennessee 37201

Re: Consent Agreement and Final Order - Docket No.: CWA-04-2016-4524(b)
National Pollutant Discharge Elimination System Permit No.: TN0024830
City of Waverly, Tennessee, Waverly Sewage Treatment Plant

Dear Mr. Goddard:

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

Should you have any questions or concerns regarding this matter, please contact Ms. Laurie Jones at (404) 562-9201. Legal inquiries should be directed to Ms. Michele Wetherington, Associate Regional Counsel, at (404) 562-9613.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Giattina".

James D. Giattina
Director
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:

**THE CITY OF WAVERLY,
TENNESSEE**

RESPONDENT.

)
) **CONSENT AGREEMENT AND**
) **FINAL ORDER**
)
)
) **Docket No.: CWA-04-2016-4524(b)**

HEARING CLERK

2016 OCT 18 PM 3:15

USEPA REGION 4
OFFICE OF REGIONAL
COUNSEL

CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B), 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*, 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)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), 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 Protection Division ("Complainant").

II. Allegations

3. To accomplish the objective of the CWA (defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), as 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 National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

4. 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 Tennessee Department of Environment and Conservation ("TDEC") approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

5. At all times relevant to this action, the City of Waverly, Tennessee ("Respondent"), is a municipality 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).

6. At all times relevant to this action, Respondent owned and/or operated a Publicly Owned Treatment Works ("POTW") including a wastewater treatment plant ("WWTP"), located in Waverly, Humphreys County, Tennessee, and its associated Wastewater Collection and Transmission System ("WCTS").

7. TDEC issued NPDES Permit No. TN0024830 (the "Permit") to the Respondent for the POTW for the discharge of treated wastewaters into navigable waters subject to specific terms and conditions. The WWTP discharges "pollutants" from a "point source" into Trace Creek, a "navigable water" as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

8. The Permit became effective on June 1, 2013, and expires on May 31, 2018. The Respondent was issued another NPDES Permit on the same date, Permit No. TN0078808, permitting the Respondent to discharge at a new outfall to the Tennessee River. Once the discharge began at the new outfall, which occurred on or about June 25, 2016, the new Permit No. TN0078808 took effect, replacing Permit No. TN0024830. As the Respondent will no longer discharge under the Permit, there should not be future violations of the Permit.

9. Section 1 of the Permit establishes effluent limitations and monitoring requirements and Section 2.1.4. of the Permit requires the Respondent to at all times properly operate and maintain all facilities and systems (and related appurtenances) for collection and treatment which are installed or used to achieve compliance with the terms and conditions of the Permit.

10. On December 11, 2015, the EPA sent a Notice of Violation (NOV) letter to the Respondent regarding deficiencies identified from a review of Discharge Monitoring Reports (DMRs). The NOV addressed Permit effluent limits exceeded for pH, Carbonaceous Biochemical Oxygen Demand, Ceriodaphnia Toxicity, and Total Nitrogen Ammonia. The NOV also requested, pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, that the Respondent provide a written explanation of the cause for each of the violations listed in the NOV and provide a summary of the corrective actions planned or taken to address the deficiencies and effluent limit exceedances.

11. On January 12, 2016, the Respondent provided a response to the NOV. The response addressed the violations in the NOV and stated that the Respondent planned to move its outfall and the new discharge would be in compliance with the new limits in Permit No. TN0078808. The response noted that in 2005 the Respondent submitted a Corrective Action Plan to TDEC recommending construction of an outfall for effluent to discharge to the Tennessee River, and that TDEC issued an NPDES permit for this outfall in 2006. The response also noted that the Respondent began construction of this project, but construction was halted from 2007-2015 awaiting permits from other federal agencies. The Respondent has now completed the project and in June 2016 began discharging all of its effluent to the Tennessee River under the new permit.

12. On March 23, 2016, the EPA sent the Respondent a letter requesting that the Respondent participate in a Show Cause meeting with the EPA to discuss the violations. The EPA and the Respondent held a Show Cause meeting on May 9, 2016.

13. Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311, in that the Respondent has discharged pollutants to navigable waters from a point source not in compliance with its Permit.

14. Respondent has violated Section 1 of its Permit, issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, by discharging pollutants into Trace Creek in excess of the limitations established in its Permit for pH, Carbonaceous Biochemical Oxygen Demand, Ceriodaphnia Toxicity, and Total Nitrogen Ammonia from July 2011 through June 2016.

15. The Respondent has violated Section 2.1.4. of its Permit, issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, by failing to properly operate and maintain its WWTP from July 2011 through June 2016.

III. Stipulations and Findings

16. 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.

17. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations and alleged violations set out above.

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

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)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, the EPA has determined that FORTY SEVEN THOUSAND AND TWO HUNDRED DOLLARS (\$47,200) is an appropriate civil penalty to settle this action. Respondent consents to the assessment of and agrees to pay the civil penalty and consents to the other conditions set forth in this CA/FO.

23. 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, 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
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

and

Mary Mattox
U.S. Environmental Protection Agency, Region 4
Water Protection Division
NPDES Permitting and Enforcement Branch
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

25. The penalty amount specified above shall represent civil penalties assessed by 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), attorney's 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 percent (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 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 CA/FO is based, or for Respondent's violation of any federal or state statute, regulation or permit.

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. 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.

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:

For Complainant:

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

For Respondent:

Drew Goddard
Bass, Berry & Sims PLC
150 Third Avenue South, Suite 2800
Nashville, Tennessee 37201
(615) 742-6224

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 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 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:

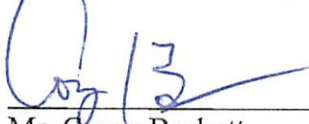
For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:



James D. Giattina
Director
Water Protection Division
U.S. EPA, Region 4

Date: 10/6/16

For RESPONDENT, THE CITY OF WAVERLY, TENNESSEE:



Mr. Corey Burkett
Superintendent
City of Waverly Water Department

Date: 8/8/2016

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

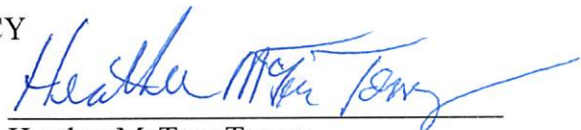
IN THE MATTER OF:)
)
THE CITY OF WAVERLY,) CONSENT AGREEMENT AND
TENNESSEE) FINAL ORDER
)
)
RESPONDENT.) Docket No.: CWA-04-2016-4524(b)
)

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*, 40 C.F.R. Part 22, and authorities delegated to me, the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: OCT - 7 2016



Heather McTeer Toney
Regional Administrator
U.S. EPA, Region 4

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 City of Waverly, Tennessee, Docket No. CWA-04-2016-4524(b) (filed with the Regional Hearing Clerk on 10-18, 2016) was served on 10-18, 2016, in the manner specified to each of the persons listed below.


By hand-delivery:

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

By certified mail,
return receipt requested:

Drew Goddard
Bass, Berry & Sims PLC
150 Third Avenue South, Suite 2800
Nashville, TN 37201
(615) 742-6224

Ms. Tisha Calabrese Benton
Director, Division of Water Resources
Tennessee Department of Environment and Conservation
401 Church Street, 6th Floor, L&C Annex
Nashville, Tennessee 37243 -0435
(615) 532-0109


Ms. Patricia A. Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9511

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

=====

TO BE COMPLETE BY ORIGINATING OFFICE:

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

This form was originated by: Mary Mattox 8/16/16
[Name] [Date]
in the WPD/NPEB/Municipal and Industrial Section at 404-562-9733
[Office] [Telephone Number]

- Non-SF Judicial Order/Consent Decree. USAO COLLECTS.
- Administrative Order/Consent Agreement. FMS COLLECTS PAYMENT.
- SF Judicial Order/Consent Decree. FMS COLLECTS.
- Other Receivables
- This is an original debt.
- This is a modification.

PAYEE: City of Waverly, TN
[Name of person and/or Company/Municipality making the Payment]

The Total Dollar Amount of Receivable: \$ 47,200
[If in installments, attach schedule of amounts and respective due dates]

The Case Docket Number: CWA-04-2016-4524 (b)

The Site-Specific Superfund (SF) Account Number: _____

The Designated Regional/Headquarters Program Office: Region 4 Water Protection Division

=====

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT SECTION:

The IFMS Accounts Receivable Control Number is: _____
If you have any questions call: _____ in the Financial Management Section,
Telephone Number: _____

=====

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
Environmental Enforcement Section
Department of Justice/RH 1647
P.O. BOX 7611, Benjamin Franklin Station
Washington, DC 20044
- 2. Originating Office (ORC)
- 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 sent to:

- 1. Originating Office
- 2. Designated Program Office
- 3. Regional Hearing Clerk
- 4. Regional Counsel