

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

REGIONAL HEARINGS UNIT  
EPA REGION III PHILADELPHIA, PA

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In the Matter of:	:	Proceeding to Assess Class II
	:	Administrative Penalty Under
City of Hopewell, Virginia	:	Section 309(g) of the Clean Water Act
	:	
Respondent	:	Docket No. CWA-03-2015-0218
	:	
	:	<b>CONSENT AGREEMENT</b>
Hopewell Regional Wastewater Treatment	:	<b>AND</b>
Facility	:	<b>FINAL ORDER</b>
231 Hummel Ross Road	:	
Hopewell, Virginia 23860	:	
	:	
Facility	:	

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**CONSENT AGREEMENT**

**I. STATUTORY AND REGULATORY BACKGROUND**

1. Pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency ("EPA") is authorized to assess administrative penalties against persons who violate Section 301(a) of the Act, *id.* § 1311(a). The Administrator has delegated this authority to the Regional Administrator of EPA Region III, who in turn has delegated this authority to the Director, Water Protection Division ("Complainant").
2. This Consent Agreement is entered into by the Complainant and the City of Hopewell, Virginia ("Respondent"), pursuant to Section 309(g) of the CWA and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22.
3. The Consolidated Rules, at 40 C.F.R. § 22.13(b), provide in pertinent part that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). Pursuant thereto, this Consent Agreement and Final Order ("CAFO") simultaneously commence and conclude this administrative proceeding against Respondent.

4. Section 309(g)(2)(B) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(B), authorizes the assessment of administrative penalties against any person who violates any NPDES permit condition or limitation in an amount not to exceed \$10,000 per day for each day of violation, up to a total penalty amount of \$125,000.
5. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), any person who has violated any NPDES permit condition or limitation during the following timeframes is liable for an administrative penalty amount as follows: from March 16, 2004 through January 12, 2009 - not to exceed \$11,000 per day for each day of violation up to a total penalty of \$157,500; from January 13, 2009 through December 6, 2013 - not to exceed \$16,000 per day for each day of violation up to a total penalty amount of \$177,500; and from December 7, 2013 through the present, not to exceed \$16,000 per day for each day of violation up to a total penalty amount of \$187,500.
6. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.
7. Section 402(a) of the Act, 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 waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit. Section 402(b) of the Act, 33 U.S.C. § 1342(b) provides for the authorization of state programs to issue NPDES permits.

## **II. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS AND CONCLUSIONS OF LAW**

8. Respondent is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
9. Respondent is the owner and operator of the Hopewell Regional Wastewater Treatment Facility ("Facility") located at 231 Hummel Ross Road, Hopewell, Virginia 23860.
10. "Discharge of a pollutant" includes "any addition of any 'pollutant' or combination of pollutants to 'waters of the United States' from any 'point source'." 40 C.F.R. § 122.2.
11. "Pollutant" as defined at Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2 means dredged spoil, solid waste, incinerator residue, filter backwash, 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.

12. Ammonia, Carbonaceous Biochemical Oxygen Demand<sup>5</sup> (“CBOD5”), Dissolved Oxygen (“DO”), Escherichia coli (“E. Coli”), Total Suspended Solids (“TSS”), and Total Residual Chlorine (“TRC”) are pollutants as that term is defined at Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2.
13. “Waters of the United States or waters of the U.S.” is defined at 40 C.F.R. § 122.2 in pertinent part, as “[a]ll waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide . . . such as intrastate lakes, rivers, streams.”
14. The Facility discharges pollutants to Gravelly Run, which is a tributary of the James River, each of which is a water of the U.S.
15. On March 31, 1975, EPA authorized the Commonwealth of Virginia to administer the NPDES program. EPA retains concurrent enforcement authority pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i).
16. On September 30, 2008, the Virginia Department of Environmental Quality (“VADEQ”) issued NPDES Permit No. VA0066630 (“Permit”) to the Respondent for the Facility. The Permit was issued for a term of five years and has been administratively extended to the present.
17. The Permit includes a number of requirements, including, inter alia, effluent limitations for Ammonia, CBOD5, E. Coli, TSS and TRC and DO.
18. NPDES permits impose self-monitoring and self-reporting requirements as set forth in 40 C.F.R. § 122.21.
19. Pursuant to the terms of the Permit and 40 C.F.R. § 122.41, Respondent submitted monthly Discharge Monitoring Reports (“DMRs”) to the VADEQ as required.
20. Based on the information reported by Respondent in DMRs submitted to the VADEQ, Respondent had at least forty-two discharges of pollutants in concentrations or amounts contrary to specific effluent limitations in its NPDES Permit from December 2008 through April 2015. The Permit effluent limits violated include: a) ammonia - monthly average concentration limit, maximum concentration limit and average load limit; b) CBOD5 - monthly average loading, maximum load limit, average concentration limit and maximum concentration limit; c) TSS - average concentration , maximum concentration, average loading, maximum loading limits; d) E.coli - average concentration limit; chlorine -

instantaneous minimum limit; and e) Dissolved Oxygen - weekly average minimum concentration. See Attachment A hereto.

21. Each discharge not in accordance with specific effluent limitations in the Permit is a violation of Respondent's NPDES Permit and Section 301 of the CWA, 33 U.S.C. § 1311.
22. Respondent and the Commonwealth of Virginia Water Control Board entered into two Enforcement Orders by Consent, on October 30, 2009 and October 4, 2013. These Orders by Consent addressed some, but not all, of the Permit effluent limit violations referenced in paragraph 20, above.

### **III. GENERAL PROVISIONS**

23. Respondent neither admits nor denies EPA's findings and allegations set forth in Section II, above.
24. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.
25. Respondent hereby expressly waives its right to a hearing or other proceeding 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.
26. Each party shall bear its own costs and attorney fees.
27. The provisions of this CAFO shall be binding upon Respondent, its officers, principals, directors, successors and assigns.
28. The parties agree that settlement of this matter prior to the initiation of litigation, any hearing or adjudication is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.
29. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on this CAFO prior to issuing the Final Order. In addition, pursuant to Section 309(g)(1)(A), EPA has consulted with the VADEQ regarding this action, and will mail a copy of this document to the appropriate VADEQ official.

### **IV. CIVIL PENALTY**

30. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the violation(s) alleged, 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 and Respondent agree that Respondent will pay a civil penalty in the amount of fifty thousand dollars (\$50,000.00) in full and final settlement of EPA's claims for the violations alleged herein.

31. Respondent shall pay the amount of fifty thousand dollars (\$50,000) pursuant to this CAFO within thirty (30) days of the effective date, in the following manner:
- A. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, CWA 03-2015-0218;
  - B. All checks shall be made payable to "United States Treasury";
  - C. All payments made by check and sent by regular mail shall be addressed to:  
  
U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
  
Contact: Craig Steffen 513-487-2091
  - D. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:  
  
U.S. Bank  
Government Lockbox 979077  
U.S. EPA, Fines & Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101  
Contact: Craig Steffen 513-487-2091
  - E. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:  
  
Cincinnati Finance  
US EPA, MS-NWD  
26 W. M.L. King Drive  
Cincinnati, OH 45268-0001
  - F. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account No. = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

- G. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737  
Contact: John Schmid 202-874-7026 or  
Remittance Express (REX) 866-234-5681

- H. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV  
Enter sfo 1.1 in the search field. Open and complete the form.

Additional payment guidance is available at:  
[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

32. Respondent shall send notice of such payment, including a copy of the check if payment is made by 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-

Deane Bartlett, Esquire  
Mail Code 3RC20  
Office of Regional Counsel  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
or  
bartlett.deane@epa.gov

33. 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 payments as required herein 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 it is due. 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).

34. 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).
35. The penalty specified in Paragraph 30, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

#### **V. RESERVATION OF RIGHTS**

36. This Consent Agreement and the accompanying Final Order resolve only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA 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 Clean Water Act, 33 U.S.C. § 1251 et seq., 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.

37. 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 applicable provision of law.
38. Entry of this CAFO is a final settlement of all violations alleged in this CAFO. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in this CAFO 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.

#### **VI. PARTIES BOUND**

39. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind the Respondent.

#### **VII. ENTIRE AGREEMENT**

40. 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.

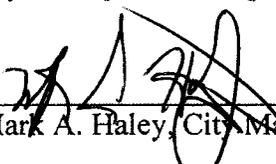
#### **VIII. APPLICABLE LAWS**

41. 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.

**IX. EFFECTIVE DATE**

42. This CAFO will be issued after a forty (40) day comment period, execution by an authorized representative of the EPA and filing with the Regional Hearing Clerk. It will become final and effective thirty (30) days after issuance. Payment of the civil penalty assessed in this CAFO is due thirty (30) days after the effective date, unless a petition to set aside the CAFO is filed pursuant to 40 C.F.R. § 22.45(c)(4).

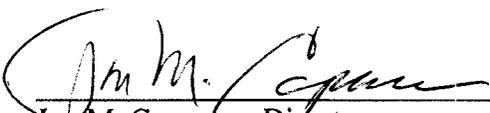
FOR: City of Hopewell, Virginia:

By:   
Mark A. Haley, City Manager

Date: 8-19-2015

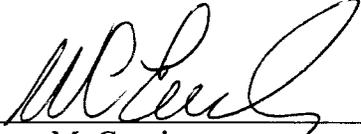
FOR: United States Environmental Protection Agency:

Date: 9/23/15

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

SO ORDERED, pursuant to 33 U.S.C. 1319(g), and 40 C.F.R. Part 22,

this 24<sup>th</sup> day of September, 2015



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Shawn M. Garvin  
Regional Administrator  
U.S. EPA Region III

**Attachment A**

Year	Month	Parameter	Item	Concentration Limit (mg/L)	DMR Reported (mg/L)
2008	DEC	Ammonia	Monthly Average Concentration	18.9	19.5
2009	JAN	Ammonia	Monthly Average Concentration	18.9	20.6
2009	JAN	CBOD5	Monthly Average Concentration	37	61
2009	JAN	CBOD5	Maximum Concentration	53	106
2009	JAN	CBOD5	Average Loading	4400	6085
2009	JAN	CBOD5	Maximum Loading	6300	10403
2010	JAN	Ammonia	Monthly Average Concentration	18.9	24
2010	JAN	Ammonia	Maximum Concentration	30.9	34.9
2010	JAN	Ammonia	Average Loading	2510	2533
2010	JAN	CBOD5	Monthly Average Concentration	37	114
2010	JAN	CBOD5	Maximum Concentration	53	149
2010	JAN	CBOD5	Average Loading	4400	12028
2010	JAN	CBOD5	Maximum Loading	6300	17214
2010	FEB	Ammonia	Monthly Average Concentration	18.9	22.2
2010	FEB	CBOD5	Monthly Average Concentration	37	43
2010	FEB	CBOD5	Average Loading	4400	4560
2010	MAR	Ammonia	Monthly Average Concentration	18.9	20.4
2010	APR	Ammonia	Monthly Average Concentration	18.9	23.6
2010	APR	Ammonia	Maximum Concentration	30.9	36.1
2010	MAY	Ammonia	Monthly Average Concentration	18.9	20
2010	AUG	E.coli	Monthly Average Concentration	126	179

Year	Month	Parameter	Item	Concentration Limit (mg/L)	DMR Reported (mg/L)
2011	JUL	E.coli	Monthly Average Concentration	126	646
2011	AUG	E.coli	Monthly Average Concentration	126	159
2011	OCT	Ammonia	Monthly Average Concentration	18.9	19.9
2011	NOV	E.coli	Monthly Average Concentration	126	163
2011	DEC	E.coli	Monthly Average Concentration	126	249
2012	MAY	Dissolved Oxygen	Weekly Average Minimum Concentration	6	5.7
2012	JUL	Chlorine	Instantaneous Minimum Concentration	0.6	0
2012	JUL	E.coli	Monthly Average Concentration	126	199
2012	AUG	Chlorine	Instantaneous Minimum Concentration	0.6	0.23
2012	SEP	Chlorine	Instantaneous Minimum Concentration	0.6	0
2012	OCT	Ammonia	Monthly Average Concentration	18.9	20.6
2012	NOV	Chlorine	Instantaneous Minimum Concentration	0.6	0
2012	DEC	Ammonia	Monthly Average Concentration	18.9	19.2
2012	DEC	Chlorine	Instantaneous Minimum Concentration	0.6	0
2013	JUN	Chlorine	Instantaneous Minimum Concentration	0.6	0.21
2014	FEB	Ammonia	Monthly Average Concentration	18.9	19.5
2014	DEC	Total Suspended Solids	Monthly Average Concentration	11000	11556

Year	Month	Parameter	Item	Concentration Limit (mg/L)	DMR Reported (mg/L)
2014	DEC	Total Suspended Solids	Maximum Concentration	15000	21749
2014	DEC	Total Suspended Solids	Average Loading	76	109
2014	DEC	Total Suspended Solids	Maximum Loading	110	190
2015	APR	Dissolved Oxygen	Weekly Average Minimum Concentration	6	5.8

**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 and one copy of the Consent Agreement and Final Order in the matter of: City of Hopewell, Virginia, Docket No. CWA-03-2015-0218.

I further certify that I caused a copy of the same to be sent to the following individual by regular mail, postage prepaid:

Bernadette M. Rappold, Esquire  
McGuire Woods  
2001 K Street NW  
Suite 400  
Washington, DC 20006-1040

Date:

September 29, 2015



Deane H. Bartlett  
Senior Assistant Regional Counsel  
US EPA Region III