

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

The Village of Kiryas Joel
PO Box 566
Monroe, New York 10949

SPDES Permit No. NYR20A496

Respondent.

Proceeding pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. §1319(g)

**CONSENT AGREEMENT
AND FINAL ORDER**

DOCKET No. CWA-02-2016-3315

U.S. Environmental
Protection Agency
Region 2
2017 AUG -8 AM 9:10
COMMUNICATIONS
DIVISION

I. PRELIMINARY STATEMENT

Complainant, the United States Environmental Protection Agency (“EPA”), having issued Complaint Number CWA-02-2016-3315 on June 30, 2016, against the Village of Kiryas Joel (“Respondent” or “the Village”), and

Complainant and Respondent having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby agreed, and ordered as follows:

II. PROCEDURAL AND FACTUAL BACKGROUND

1. EPA initiated this proceeding for the assessment of a civil penalty pursuant to Section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. §1319(g).
2. The Complaint alleges that Respondent is liable for violating Section 301 of the CWA, 33 U.S.C. §1311, for failing to comply with the terms of the New York State Department of Environmental Conservation’s State Pollutant Discharge Elimination System (“SPDES”) General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems, SPDES Permit No. GP-02-02.

3. EPA notified the State of New York regarding this action and offered an opportunity for the State of New York to confer with EPA on the proposed penalty assessment, pursuant to 40 C.F.R. Part 22.
4. This action was publicly noticed. No public comment was received.
5. Respondent requested informal settlement discussions.
6. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted against Respondent. Respondent hereby waives any defenses it might have as to jurisdiction and venue, admits that factual and legal allegations were contained in the Complaint and consents to the terms of this Consent Agreement and Final Order, but in so consenting to the factual and legal allegations does not waive any defenses it may have to any such factual or legal allegations not based on jurisdiction and not based on failure to state a claim.
7. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

III. TERMS OF SETTLEMENT

Pursuant to Section 309(g) of the 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, 40 C.F.R. §22.18, it is hereby agreed by and between the parties, and Respondent voluntarily and knowingly agrees as follows:

8. Pursuant to Section 309(g) of the CWA, 33 U.S.C. §1319(g), the nature of the violations, and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of twenty-seven thousand dollars (\$27,500.00).
9. For purposes of settlement, Respondent consents to the issuance of this Consent Agreement and consents to the payment of the civil penalty cited in the foregoing Paragraph.

IV. PAYMENT OF CIVIL PENALTY

10. No later than forty-five days after the effective date of this order, Respondent shall pay a civil penalty in the amount of **Twenty-Seven Thousand Five Hundred Dollars (\$27,500.00)** to the "Treasurer of the United States of America."
11. Payments can be made by debit/credit card, check, or electronically. Electronic payments fall into two categories: wires and Automated Clearinghouse ("ACH"). Wires are same day and more costly. ACH is the next day or any future scheduled day and is less expensive. Please note that wires and ACH payments must be conducted through the sender's bank. The checks (cashier's or certified checks only) shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Payment methods are described below:

Type of Payment	Payment Information		
Debit and Credit Card Payments	https://www.pay.gov/paygov/		
Checks from U.S. Banks		U.S. Postal Service	UPS, Federal Express, or Overnight Mail
Finance Center Contacts: Craig Steffen (513-487-2091)	Check Payments – Fines and Penalties	US Environmental Protection Agency Fines and Penalties Cincinnati Finance Center PO Box 979077 St. Louis, MO 63197-9000	U.S. Bank Government Lockbox 979077 US EPA Fines & Penalties 1005 Convention Plaza SL-MO-C2-GL St. Louis, MO 63101 314-418-1028 Contact: Natalie Pearson 314-418-4087
Checks drawn on foreign banks with no USA branches (any currency)	Cincinnati Finance US EPA, MS-NWD 26 W ML King Drive Cincinnati, OH 45268-0001		
Wire Transfers (any currency)	Federal Reserve Bank of New York ABA: 021030004 Account Number: 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"		
ACH - Automated Clearinghouse for receiving US currency Finance Center Contacts: John Schmid (202-874-7026) REX (Remittance Express) 1-866-234-5681	US Treasury REX / Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking Physical location of US Treasury facility: 5700 Rivertech Court Riverdale, MD 20737		

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Department 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.

Respondent shall also send copies of this payment to each of the following:

Branch Chief
Water Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. EPA, Region 2
290 Broadway, 20th Floor
New York, New York 10007-1866

and
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007.

The payment must be received at the above address on or before forty-five (45) calendar days after the effective date of this Order at the end of this document (the date by which payment must be received shall hereafter be referred to as the "due date").

12. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for Collection.
13. Further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. §3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty will also be applied on any principal amount not paid within 90 days of the due date.
14. In addition, pursuant to Section 309(g)(9) of the Act, 33 U.S.C. §1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties, which are unpaid as of the beginning of such quarter. You may also be required to pay attorney's fees and costs for collection proceedings in connection with nonpayment.
15. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondent's federal or New York State taxes.

V. GENERAL PROVISIONS

16. The provisions of this CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns, including, but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve Respondent of its obligation to comply with this CA/FO.
17. The Respondent waives any right it may have pursuant to 40 C.F.R. §22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication

addressed to the Director or the Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.

18. Except for the specific violations alleged herein, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.
19. 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.
20. This CA/FO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations by the Respondent alleged 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. Compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.
21. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
22. Respondent's full compliance with this Consent Agreement shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Respondent's full compliance with this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations and facts alleged in the complaint.
23. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CA/FO.

RESPONDENT:

BY: 

Mr. Gedalye Szegedin
Village Administrator
The Village of Kiryas Joel
P.O. Box 566
Monroe, New York 10949

DATE: 7/26/17

COMPLAINANT:

BY: 

Dere LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York, 10007

DATE: 8/4/17

VI. FINAL ORDER

The Regional Administrator of the United States Environmental Protection Agency, Region 2, vested by authority delegated by the Administrator of the United States Environmental Protection Agency ("EPA") and having further re-delegated such authority to the Division of Enforcement and Compliance Assistance, Region 2, EPA, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.

DATED: 8/4/17



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007-1866

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RESPONDENT

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CERTIFICATION OF SERVICE

I certify that on AUG 07 2017, I served the foregoing fully executed Consent Agreement and Final Order, bearing the above reference.' docket number, on the persons listed below, in the following manner:

Original and One Copy
By Hand:

Office of Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Certified Mail
Return Receipt Requested:

Donald G. Nichol
Jacobowitz and Gubits LLP
548 Broadway
Monticello, New York 12586

Dated: AUG 07 2017



Branch Secretary
New York, New York