

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III  
1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

RECEIVED

2012 MAY -3 PM 4:56

REGIONAL HEARING CLERK  
EPA REGION III, PHILA. PA

In the Matter of	:	Class II Proceeding Under Section
	:	309(g)(2)(A) of the
<b>Henrico County</b>	:	Clean Water Act
<b>4301 Parham Road</b>	:	
<b>Henrico, VA 23228</b>	:	EPA Docket No. CWA-03-2011-
	:	0139
	:	
	:	<b>CONSENT AGREEMENT</b>
Respondent	:	<b>and FINAL ORDER</b>
	:	

**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 Henrico County ("Henrico" or "Respondent"), pursuant to Section 309(g) of the Clean Water 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 Clean Water Act, 33 U.S.C. § 1311, alleged in an administrative Complaint filed on April 6, 2011.
2. Pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 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 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 \$177,500.

**II. FINDINGS OF FACT AND JURISDICTIONAL ALLEGATIONS**

3. Respondent neither admits nor denies the factual allegations contained in Paragraphs 3 through 52 of the administrative Complaint filed on April 6, 2011.
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 neither admits nor denies it has violated Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and likewise neither admits nor denies that it 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 this CAFO.

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 violation(s), 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 eighty-two thousand dollars (\$82,000) in full and final settlement of EPA's claims for civil penalties for the violations alleged herein. Failure to comply with the payment terms will result in EPA seeking additional penalties under the Consent Agreement.

12. Respondent shall pay the total administrative civil penalty of eighty-two thousand dollars (\$82,000) 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), by either mailing a cashier's check or certified check, or wire transfer, or automated transaction for the penalty to "Treasurer, United States of America," in one of the following ways:

By regular mail:

Regional Hearing Clerk  
U.S. EPA Region III  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

By overnight delivery:

U.S. Bank, Government Lock Box 979077  
US EPA Fines and Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
314-418-1028

By Wire Transfer:

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"

By Automated Clearinghouse (ACH):

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

Respondent shall send notice of such payment, including a copy of the check or automated transaction, to the Regional Hearing Clerk at the following address:

Lydia Guy  
Regional Hearing Clerk  
U.S. EPA Region III, Mail Code 3RC00  
1650 Arch Street  
Philadelphia, PA 19103-2029

-and-

Pamela J. Lazos  
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).

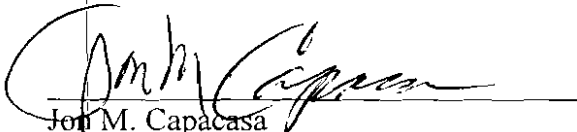
The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more 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 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.
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. The penalty specified above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.
18. 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.
19. In addition, EPA shall have the right to seek additional penalties under this CAFO should Respondent fail to fulfill its obligations under this CAFO.
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 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 THE COMPLAINANT, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:**

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

**FOR RESPONDENT HENRICO COUNTY:**

  
John A. Vithoulkas  
Acting County Manager  
County of Henrico, Virginia

**APPROVED AS TO FORM**  
  
Asst. **COUNTY ATTORNEY**

**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, and that copies of this document were sent to the following individuals in the manner described below:

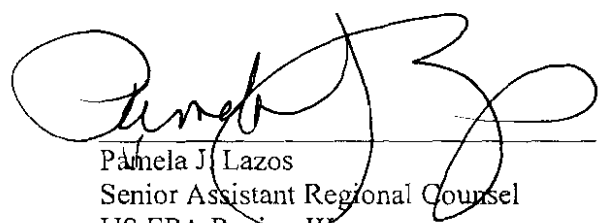
By hand delivery:

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

By first class mail:

Benjamin A. Thorp, Esquire  
County of Henrico  
Office of the County Attorney  
4301 East Parham Road  
Henrico, Virginia 23228-2752

Date: 5/4/12



\_\_\_\_\_  
Pamela J. Lazos  
Senior Assistant Regional Counsel  
US EPA Region III

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

In the Matter of:

**Henrico County**  
4301 Parham Road  
Henrico, VA 23228

Respondent

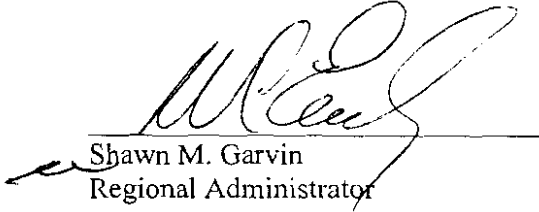
Class II Proceeding Under  
Section 309(g)(2)(A) of the  
Clean Water Act

EPA Docket No. CWA-03-2011-  
0139

**CONSENT AGREEMENT  
and FINAL ORDER**

NOW THEREFORE, PURSUANT TO Section 309(g) of the Clean Water Act (ACWA), 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties (*Consolidated Rules*), 40 C.F.R. Part 22, and based upon the representations made in the Consent Agreement, having determined that the penalty agreed to in the Consent Agreement is based upon a consideration of the factors set forth in Section 309(g)(2)(B)(3) of the CWA, IT IS HEREBY ORDERED that Respondent pay a penalty of eighty-two thousand dollars (\$82,000) in accordance with Section IV of this document.

Dated: 5/1/12

  
Shawn M. Garvin  
Regional Administrator



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

4/26/12

**SUBJECT:** Henrico County,  
EPA Docket No. CWA-03-2011-0139

**FROM:** Jon A. Capacasa, Director  
Water Protection Division (3WP00)

Marcia Mulkey, Regional Counsel  
Office of Regional Counsel (3RC00)

**TO:** Shawn M. Garvin  
Regional Administrator (3RA00)

This transmittal memorandum summarizes the key issues associated with the issuance of a Consent Agreement and Final Order ("CAFO") issued to Henrico County, 4301 Parham Road, Henrico, Virginia, 23228 ("Respondent"), in settlement of violations of Section 301 of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §1311, and authorized by Section 309(g) of the CWA, 33 U.S.C. §1319(g).

EPA issued a Complaint against Respondent proposing a penalty of \$164,300. The parties have agreed to settlement of its violations for the sum of \$82,000 based upon measures enacted as a result of the Respondent's proactive stance in curing many of the deficiencies surrounding its compliance with its Virginia Pollution Discharge Elimination System (VPDES) Permit. In addition, Respondent clarified certain plant practices which added to EPA's reduction of the penalty. Respondent is already under an Administrative Order to remedy the various violations at the facility, EPA Docket No. CWA-03-2011-0133DN.

The settlement is in accordance with the CWA penalty settlement policy.

We recommend that you sign the attached CAFO. Questions concerning this matter may be directed to Pamela J. Lazos, Sr. Assistant Regional Counsel, at ext. 2658.

cc: Benjamin Thorpe, Esq.

