



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REGION 2  
2008 OCT -7 PM 4:16  
REGIONAL HEARING  
CLERK

Kirkpatrick & Lockhart  
Attn: Donald W. Stever, Esq.  
599 Lexington Avenue  
New York, N.Y. 10022-6030

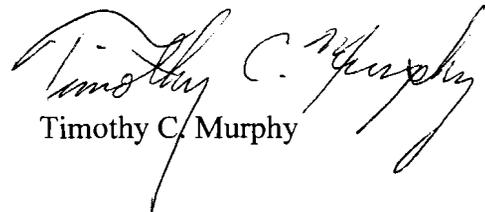
October 7, 2008

Subject: Wyeth Pharmaceuticals, Inc., CWA 02-2007-3342

Dear Mr. Stever:

Enclosed herewith is the Consent Agreement/Final Order (CAFO) for the subject case. Please contact me at (212) 637-3236 if you have any questions with respect to this document. Thank you.

Yours truly,

  
Timothy C. Murphy

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
Region 2**

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2007 OCT -7 PM 4:16  
REGIONAL HEARING  
CLERK

**IN THE MATTER OF:**

**Wyeth Pharmaceuticals Inc.  
64 Maple Street  
Rouses Point, NY 12979**

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-02-2007-3342**

**CONSENT AGREEMENT AND ORDER**

Complainant, the United States Environmental Protection Agency ("EPA"), having issued a Complaint in the above referenced matter on September 20<sup>th</sup>, 2007, against Respondent Wyeth Pharmaceuticals Inc. ("Respondent") for failure to submit pretreatment reports in violation of Sections 307 (d) and 308 (a) of the Clean Water Act ("Act"), 33 U.S.C. §§ 1317 (d) and 1318 (a), 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 (hereinafter "CA/FO") 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:

**I. PRELIMINARY STATEMENT**

1. EPA initiated this proceeding for the assessment of a civil penalty, pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319.
2. The Complaint alleges that Respondent failed to submit pretreatment reports.
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 CFR Part 22.

4. This action was public noticed, no public comment was received.
5. Respondent did not file an Answer, but did request an informal settlement conference.
6. This Consent Agreement and Final Order shall apply to and be binding upon Respondent, its officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers.
7. Solely for the purposes of this proceeding: (i) 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, (ii) Respondent waives any defenses it might have as to jurisdiction and venue, and, (iii) without admitting or denying the factual or legal allegations contained in the Complaint, consents to the terms of this Consent Agreement and Final Order.
8. 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.

## **II. TERMS OF SETTLEMENT**

9. Pursuant to § 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), the nature of the violations, Respondent's agreement to perform a Supplemental Environmental Project ("SEP") and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of SEVEN THOUSAND FIVE HUNDRED (\$7,500.00) DOLLARS.
10. 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 and consents to the performance of the Supplemental Environmental Project.

### **II.A. Penalty**

11. No later than forty-five (45) days after the date of signature of the executed Final Order signed by the Regional Administrator or his duly delegated representative, U.S. EPA, Region 2, or the date of Respondent's receipt of the Final Order, whichever is

later, Respondent shall pay the penalty of SEVEN THOUSAND FIVE HUNDRED (\$7,500.00) DOLLARS by cashier's or certified check, payable to the "Treasurer of the United States of America", 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. This check shall be mailed to: 45 days of payment issuance vs receipt below.

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

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

Ari Harris, Team Leader  
NPDES Team  
Water Compliance Branch  
U.S. EPA, Region 2  
290 Broadway, 20<sup>th</sup> Floor  
New York, NY 10007

And

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

Payment must be received at the above address no later than forty-five (45) calendar days after the date of signature of the Final Order by the Regional Administrator or his duly delegated representative (at the end of this document) or the date of Respondent's receipt of the Final Order, whichever is later (the "Effective Date"). The date by which payment must be received shall hereafter be referred to as the "due date".

- a. failure to pay the penalty in full according to the above provisions will result in a referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection;
  - b. 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 also will be applied on any principal amount not paid within 90 days of the due date;
  - c. in addition, pursuant to § 309(g)(9) of the Clean Water 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;
  - d. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
12. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondent's federal or state taxes.

### **II. B. Supplemental Environmental Project ("SEP")**

13. a. Respondent shall complete the following supplemental environmental project ("SEP"), which the Parties agree is intended to secure significant environmental or public health protection and improvement:
- Respondent shall purchase or fund the purchase of equipment amounting to approximately \$37,000 for the Village of Champlain WWTP which discharges to Lake Champlain, NY. The purchased equipment will include a computer system, an open channel flow meter, a nine channel paperless recorder, a fixed Doppler converter, a high quality tool set and storage unit for installation, maintenance and repair of equipment, an all weather sampler, testing and monitoring equipment, and a Raven centrifuge. Respondent, owner and operator of its Rouses Point, NY facility, discharges wastewater that is regulated under the Clean Water Act, to the Rouses Point WWTP, which also discharges also to Lake Champlain, NY.

The SEP is an environmentally beneficial project because acquisition and installation of the new equipment reduces the risks to public health and/or the environment that would result from the discharge of improperly treated wastewater.

- b. EPA and Respondent agree that Respondent has, prior to the Effective Date of this CA/FO, commenced the purchase of the equipment specified in Paragraph 13.a. above, with EPA's consent. By October 1, 2008, Respondent shall submit a Work Plan Progress Report with respect to the SEP stated in Paragraph 13. a. above, which includes, at a minimum: an itemized list of the equipment described in Paragraph 13a. purchased to date, and the actual amount expended by Respondent for such equipment, and a schedule of equipment remaining to be purchased and the estimated cost of such equipment.
  - c. If EPA approves the Work Plan Progress Report required by Paragraph 13. b. above, EPA shall provide written notice of the Progress Report approval.
  - d. If EPA approves the Work Plan Progress Report required by Paragraph 13. b. above, the EPA- approved schedule of purchases contained therein shall be incorporated by reference into this CA/FO and shall be binding and enforceable.
  - e. The SEP as described in Paragraph 13. a. above shall be achieved in accordance with the provisions of this CA/FO
  - f. **The SEP shall be completed** within six months of the Effective Date of this CA/FO.
14. **Federal Tax:** For Federal Income Tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.
  15. **SEP Cost:** The total expenditure for the SEP, at its cost to the Respondent, shall be not less than \$37,000. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.
  16. **Certification:** Respondent hereby certifies that, as of the date of this Consent Agreement and Final Order ("CA/FO"), Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent or any Third Party (if applicable) required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

17. **SEP Completion Report:** Respondent shall submit a SEP Completion Report to EPA by six months after the Effective Date of this CA/FO. The SEP Completion Report shall contain the following information:

§ a detailed description of the SEP as implemented, and;

§ a map of the SEP as implemented, and;

§ itemized costs

In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, “acceptable documentation” includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made, and;

§ certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order, and;

§ description of the environmental, ecological and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

18. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this Consent Agreement, Respondent shall, by David Champagne, Managing Director of the facility sign and certify under penalty of law that the information contained in such document or report is true, accurate, and complete by signing the following statement:

“I hereby certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.”

19. **Periodic Reports/Submissions:** Respondent shall submit any additional reports or information required by the Work Plan to EPA in accordance with the schedule and requirements recited therein.
20. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this Consent Agreement for a term of five (5) years after the implementation of the SEP and shall provide the documentation of any such underlying research and data to EPA not more than ten (10) working days, or such other agreed upon schedule, after a request for such information.
21. **Public Statements:** Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Clean Water Act." This statement should also be made in Spanish, where appropriate (i.e., in Puerto Rico): "Este proyecto fue realizado como parte de un acuerdo legal con relación a una acción de cumplimiento por violaciones a la Ley Federal de Agua Limpia presentada por la Agencia Federal de Protección Ambiental de los Estados Unidos."
22. **EPA Acceptance of SEP Completion Report:**
  - a. After receipt of the SEP Completion Report described in Paragraph 17 above, EPA will notify Respondent, in writing, regarding: (i) any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or, (ii) indicate that EPA concludes that the project has been completed satisfactorily; or, (iii) determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 23 below.

- b. If EPA elects to exercise option (i) above, i.e., if the SEP Completion Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency given pursuant to this Paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be reasonable and final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this Consent Agreement and Final Order. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 23 below.

**23. Stipulated Penalties:**

- a. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in Section II.B above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 13 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
  - i. If Respondent fails to satisfy EPA requirements as detailed in Paragraph 13. b. above, EPA shall provide written notice of the disapproval and the SEP shall not be completed and Respondent shall pay a stipulated penalty in the amount of \$37,000.00
  - ii. If the SEP is satisfactorily completed in accordance with Paragraph 13 above but Respondent expends less than the agreed to \$37,000.00 for the SEP project, Respondent shall pay a stipulated penalty equal to the difference between the amount of eligible SEP costs incurred by the Respondent and \$37,000.00.

- iii. If the SEP is not completed in accordance with Paragraph 13 but: (a) Respondent certifies, with supporting documentation, the amount of eligible costs expended on the SEP, and (b) EPA determines that the Respondent made good faith and timely efforts to complete the project, then, Respondent shall pay a stipulated penalty that is the difference between the eligible SEP costs incurred by Respondent and \$37,000.00. If Respondent documents that it, together with the third party (if applicable), did all that they could to ensure timely completion of the SEP but the SEP is not timely completed because of action, or inaction, on the part of the state government or a court, then it shall be deemed that the Respondent made good faith and timely efforts to complete the SEP project.
  - iv. If Respondent halts or abandons work on the SEP as described in Paragraph 13.a, above and after the Work Plan has been approved by EPA, prior to its completion, Respondent shall pay a stipulated penalty of \$10,000 and shall also pay the difference between eligible costs incurred and \$37,000.00.
  - v. For failure to submit the SEP Completion Report required by Paragraph 17 above, Respondent shall pay a stipulated penalty in the amount of \$100 for each day after the report was due until the report is submitted.
  - vi. For failure to submit any other report required by Paragraph 19 above, Respondent shall pay a stipulated penalty in the amount of \$100 for each day after the report was originally due until the report is submitted.
- b. The determinations as to whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole reasonable discretion of EPA.
  - c. Respondent shall pay stipulated penalties within thirty (30) days after receipt of written demand by EPA for such penalties. Payment of stipulated penalties shall be made payable to the "Treasurer of the United States of America." Such check shall be mailed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

The checks 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.

A copy of the check and any transmittal letter shall be sent to each of the following:

Ari Harris, Team Leader  
NPDES Team  
Water Compliance Branch  
U.S. EPA, Region 2  
290 Broadway, 20<sup>th</sup> Floor  
New York, NY 10007

and

Regional Hearing Clerk  
U.S. EPA, Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007

Interest and late charges on stipulated penalties shall be paid as stated in Paragraph 11 above.

## **II. C. General Provisions**

24. Respondent shall submit all notices and reports required by this Consent Agreement and Final Order by first class mail to:

Ari Harris, Team Leader  
NPDES Team  
Water Compliance Branch  
U.S. EPA, Region 2  
290 Broadway, 20<sup>th</sup> Floor  
New York, NY 10007

25. 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.

26. 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.
27. This Consent Agreement and Order 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, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent, if any, in connection with the SEP undertaken pursuant to this Agreement.
28. This Consent Agreement and Final Order constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the violations alleged in the Complaint. Nothing in this Consent Agreement and Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this Consent Agreement and Final Order 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.
29. 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.
30. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Consent Agreement and Order.

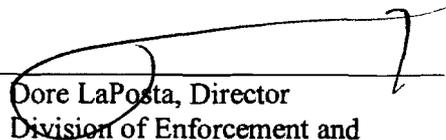
RESPONDENT:

BY:   
\_\_\_\_\_  
William Merrill  
Assistant Managing Director  
Wyeth Pharmaceuticals Inc.  
64 Maple Street  
Rouses Point, NY 12979

DATE: 25 Sep 08

COMPLAINANT:

BY: \_\_\_\_\_

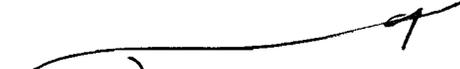
  
Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance  
U.S. EPA, Region 2  
290 Broadway, 21<sup>st</sup> Floor  
New York, New York 10007-1866

DATE: SEPTEMBER 24, 2008

### **III. FINAL ORDER**

The Regional Administrator of the U.S. Environmental Protection Agency Region 2, 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, U.S. EPA Region 2, New York, NY.

SEPTEMBER 24, 2003  
Date

  
\_\_\_\_\_  
Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance  
United States Environmental  
Protection Agency-Region 2  
290 Broadway, 21<sup>st</sup> Floor  
New York, NY 10007-1866

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

**In The Matter of  
Wyeth Pharmaceuticals Inc.  
64 Maple Street  
Rouses Point, NY 12979,**

Respondent.

**DOCKET NO. CWA-02-2007-3342**

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

**CERTIFICATE OF SERVICE**

I certify that, on the date noted below, I served the foregoing fully executed Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner.

Copy by Certified Mail      Donald W. Stever, Esq.  
Return Receipt Requested:      Kirkpatrick & Lockhart Preston Gates Ellis LLP  
599 Lexington Avenue  
New York, NY 10022-6030

Original and One Copy      Regional Hearing Clerk  
By Internal Mail (pouch):      U.S. Environmental Protection Agency  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007-1866

Date: OCT 7 2008

  
NAME OF SECRETARY, Secretary