

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Town of Binghamton
279 Park Avenue
Binghamton, New York 13903

Respondent

SPDES Permit No. NYR20A009

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-02-2017-3305

2017 OCT 17 09:21:00

I. PRELIMINARY STATEMENT

Complainant, the United States Environmental Protection Agency (“EPA”), having filed the Complaint referenced herein on March 15, 2017, against the Respondent Town of Binghamton; 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 (“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 Ordered, and Adjudged 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 (“NYSDEC’s”) State Pollutant Discharge Elimination System (“SPDES”) General Permit for Storm Water Discharges from Municipal Separate Storm Sewer Systems (“MS4 General Permit”), issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, for the MS4 that the Respondent owns and operates.
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. A Public Notice of this matter was published and no comments were received.
5. EPA and Respondent engaged in informal settlement discussions which resulted in this CA/FO.
6. Respondent, without admitting liability for the violations asserted in the Complaint or the factual allegations set forth therein, waives any defenses it might have as to jurisdiction and venue, and consents to the terms of this Agreement.
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, EPA has determined that an appropriate civil penalty to settle this action is in the amount of eighteen thousand dollars (\$18,000.00).
9. For purposes of settlement, Respondent consents to the issuance of this CA/FO, and agrees, for the purposes of settlement, to pay the civil penalty cited in the foregoing Paragraph.
10. Respondent shall pay a civil penalty in the amount of **eighteen thousand dollars (\$18,000)**, to be paid in two equal payments of nine thousand dollars (\$9,000). The payments are due on November 30, 2017 and February 28, 2018 ("due date"). Payment must be received by 11:00 a.m. Eastern Standard Time to be considered received that day.
11. Payments shall be made by one of the following methods:

By cashier's or certified check, including the name and docket number of this case, payable to "Treasurer, United States of America," mailed to:

Regular Mail

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

Mail with Signature Upon Delivery
 Receipt Requested by Sender

U.S. Bank
 Government Lockbox 979077
 U.S. EPA Fines and Penalties
 1005 Convention Plaza
 Mail Station SL-MO-C2-GL
 St. Louis, MO 63101

By Wire Transfer, directed to the Federal Reserve Bank of New York with the following information:

ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33

33 Liberty Street
New York, NY 10045

Field tag 4200 of Fedwire message should read, "D 68010727 Environmental Protection Agency."

Online, through the Department of Treasury, at www.pay.gov. Enter "sfo 1.1" in the search field. Open the form and complete the required fields.

12. Respondent shall send copies of the checks or payment documentation if payment is made by wire transfer or online to each of the following:

Cynthia L. Psoras, Esq.
Assistant Regional Counsel Water and General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

and

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

13. 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.
14. Further, if the payments are not received on or before each of the due dates, 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 each due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$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 six percent (6%) per annum penalty also will be applied on any principal amount not paid within ninety (90) days of its due date.

In addition, pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if payment is not received by each due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly

