

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, New York 10007-1866

REGIONAL HEARING
CLERK

2017 JUN 29 AM 12:00

U.S. Environmental
Protection Agency/Reg 2

IN THE MATTER OF:

Town of Florence Highway Department
11873 Thompson Corners – Florence Road
Camden, NY 13316

Respondent

Proceedings under Section 1423(c) of the Safe
Drinking Water Act, 42 U.S.C. § 300h-2(c)

**CONSENT AGREEMENT
AND
FINAL ORDER**

**DOCKET NO.
SDWA-02-2015-8901**

I. PRELIMINARY STATEMENT

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency (“EPA” or “Complainant”), issued a “Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty and Notice of Opportunity to Request a Hearing” (“Complaint”) to Respondent, Town of Florence (Docket No. SWDA-02-2015-8901).

Complainant and Respondent (collectively, “the Parties”), 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 as follows:

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. EPA initiated this proceeding to achieve compliance with the Safe Drinking Water Act (“SDWA” or “Act”) pursuant to Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c). EPA has jurisdiction over the subject matter of this action pursuant to these sections of the SDWA, and over Respondent.
2. EPA is concluding this proceeding for the assessment of a civil penalty, pursuant to Section 1423(c) of the Act, 42 U.S.C. § 300h-2(c), and 40 C.F.R. §§ 22.18(b)(2) and (3) of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits” (“CROP”), which

sets forth procedures for conclusion of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order.

3. The Complaint alleges violations of the SDWA Part C requirements – Underground Injection Control, as the violations pertain to a Class V injection well (septic system) located at Town of Florence Highway Department, 11873 Thompson Corners – Florence Road, Camden, New York 13316 (“Facility”).
4. The Complaint alleges that the Class V well is owned and/or operated by Respondent.
5. The Complaint alleges that on October 1, 2014, an EPA representative inspected the Class V well.
6. The Complaint specifically alleges that Respondent failed to fully comply with the Act, and the regulations promulgated pursuant thereto, in particular the requirement to close their existing motor vehicle waste disposal well located in a sensitive ground water area. At the time of the October inspection Respondent was still operating the above-referenced waste disposal well.
7. The State of New York elected not to delineate “Other Sensitive Ground Water Areas.” Therefore, pursuant to 40 C.F.R. § 144.88(b)(1)(vi), all existing motor vehicle waste disposal wells within New York State were required to be closed or permitted by no later than January 1, 2008.
8. This CA/FO resolves violations of the specific requirements alleged above.

III. CONSENT AGREEMENT

1. Section II, Paragraphs 1-8 above are re-alleged and incorporated herein by reference.
2. EPA and Respondent agree that it is in the public interest to resolve the issues alleged in the Consent Agreement without further litigation and the expense and effort that litigation entails.
3. Based upon the foregoing and pursuant to Section 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c), and the CROP, it is hereby agreed by and between EPA and Respondent, and Respondent voluntarily and knowingly agrees as follows.

IV. TERMS OF SETTLEMENT

1. For the purposes of this proceeding, Respondent:
 - a. Admits the jurisdictional allegations of this CA/FO;
 - b. Admits the factual allegations contained herein;

- c. Waives its right to contest the allegations, to request a judicial or administrative hearing, or to appeal this CA/FO; and
- d. Consents to the payment of a civil penalty in the amount of **six hundred forty-five dollars (\$645.00)**, as stated in Section V below.

V. PAYMENT OF CIVIL PENALTY

Pursuant to Section 1423(c) of the SDWA, 42 U.S.C. § 300h-2(c), EPA has considered statutory factors, including the seriousness of the violation(s), the economic benefit (if any) resulting from the violation(s), the history of such violation(s), the good faith efforts to comply with the applicable requirements, and other matters as justice may require.

1. EPA has determined that an appropriate civil penalty to settle this action is in the amount of **six hundred forty-five dollars (\$645.00)**.
2. Civil penalty payments shall be made to the "Treasurer of the United States of America." Payments can be made by debit/credit card, cashier's or certified check, by Electronic Fund Transfer ("EFT"), or by on-line payment. If the payment is made by check, then the check shall be payable to the "Treasurer, United States of America," and shall be mailed to:

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

The check shall display the following: **In The Matter Of Town of Florence Highway Department**, and also display the **Docket Number SDWA-02-2015-8901**. Payment of this penalty must be received at the above address on or before forty-five (45) calendar days after the Effective Date of this CA/FO.

EFT payments fall into two categories: wire transfers and Automated Clearinghouse ("ACH") payments. Wire transfers are sent on the same day and are more costly. An ACH payment is made on the next day or on a future scheduled day and is less expensive. Please note that wires and ACH payments must be sent through the sender's bank. If Respondent elects to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- a. Amount of payment: **\$645.00**
- b. SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- c. Account Code for Federal Reserve Bank of New York receiving payment: 68010727
- d. Federal Reserve Bank of New York ABA routing number: 021030004

- e. Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"
- f. Name of Respondent: Town of Florence Highway Department
- g. Case Number: SDWA-02-2015-8901.

ON LINE PAYMENT:

An on-line payment option is 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, then press "continue to the form" to open the form and complete the required fields.

Payment of this penalty must be received on or before forty-five (45) calendar days after the Effective Date of this CA/FO. The date by which payment must be received shall hereafter be referred to as the "due date."

Whether the payment is made by check, by EFT, or on-line, Respondent shall promptly thereafter furnish reasonable proof that such payment has been made to both:

Cynthia Psoras, Esq.
Assistant Regional Counsel
Water & General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
(212) 637-3169

and

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

- 3. 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.
- 4. 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.

5. In addition, pursuant to Section 1423(c)(7) of the SDWA, 42 U.S.C. § 300h-2(c)(7), if payment is not received by the due date, a civil action may be commenced in Federal District Court to recover the amount assessed, plus costs, attorneys' fees and interest at currently prevailing rates from the Effective Date (*see* Final Order, Section VII below). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. You also may be required to pay attorneys' fees and costs for collection proceedings in connection with nonpayment.
6. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondent's federal or State of New York taxes.

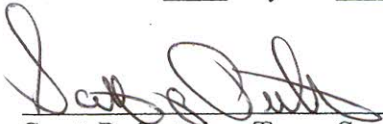
VI. GENERAL PROVISIONS

1. The provisions of this CA/FO shall apply to and be binding on 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 obligations to comply with the CA/FO.
2. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.
3. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.
4. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of the CA/FO.
5. 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 Regional Administrator or the Deputy 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.
6. Violations of the terms of the Final Order after its Effective Date (*see* Final Order, Section VII below), may subject Respondent to further enforcement action, including a civil action for enforcement of the Final Order under Section 1423(b) of the Act, 42 U.S.C. § 300h-2(b), and civil and criminal penalties for violations of the compliance terms of the Final Order under Sections 1423(b)(1) and (2) of the Act, 42 U.S.C. §§ 300h-2(b)(1) and (2).

7. This CA/FO shall not relieve Respondent of Respondent's obligations 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.
8. This CA/FO constitutes a final settlement by EPA of all claims for civil penalties pursuant to the SDWA for the violations alleged in the Complaint. 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.
9. EPA reserves the right to commence an action against any person or persons, 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 CROP. Further, EPA reserves any right and remedy available to it under the SDWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction to enforce the provisions of this CA/FO, following its filing with the Regional Hearing Clerk.
10. Complainant shall have the right to institute further actions to recover appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to EPA regarding matters at issue in the CA/FO are false or, in any material respect, inaccurate.
11. 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.
12. Respondent consents to service by a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.
13. This CA/FO shall become effective 45 days after the date of signature on the Final Order.
14. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CA/FO.
15. This Consent Agreement and the attached Final Order constitute the entire agreement and understanding of the parties concerning settlement of the above-captioned action there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CA/FO.
16. This action shall be considered closed upon EPA's receipt of payment by Respondent.

FOR THE RESPONDENT:

Dated this 5 day of: JUNE 2017



Scott P. Outtrim, Town Supervisor
Town of Florence
11897 Thompson Corners - Florence Road
Camden, NY 13316

FOR THE COMPLAINANT:

Dated this ____ day of: JUN 22, 2017



Kathleen Anderson, Acting Director
Division of Enforcement and Compliance Assistance
United States Environmental Protection Agency, Region 2
New York, New York 10007-1866

VII. 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 and having further re-delegated such authority to the Regional Judicial Officer, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the Parties is hereby approved, incorporated herein, and issued as a Final Order. The Effective Date of this Final Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.

DATE: June 29, 2017

Helen S. Ferrara

HELEN S. FERRARA
Regional Judicial Officer
U.S. EPA, Region 2
290 Broadway
New York, NY 10007-1866

IN THE MATTER OF:
Docket Number: SDWA-02-2015-8901
Town of Florence Highway Department
11873 Thompson Corners – Florence Road
Camden, NY 13316

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, New York 10007-1866

IN THE MATTER OF:

Town of Florence Highway Department
11873 Thompson Corners – Florence Road
Camden, NY 10591

Respondent.

Proceedings under Section 1423(c) of the Safe
Drinking Water Act, 42 U.S.C. § 300h-2(c)

**CONSENT AGREEMENT
AND
FINAL ORDER
MEMORANDUM**

**Docket No.
SDWA-02-2015-8901**

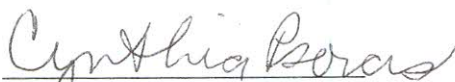
**SUBMISSION OF CA/FO FOR CONSIDERATION TO
REGIONAL JUDICIAL OFFICER**

EPA initiated this proceeding against the Town of Florence Highway Department (“Respondent”), to achieve compliance with the Safe Drinking Water Act. PHSA §§ 1401 – 1464, 42 U.S.C §§ 300f – 300j-26. Specifically, the Complaint alleges that Respondent failed to close their existing motor vehicle waste disposal well located in a sensitive ground water area.

The Consent Agreement and Final Order (“CA/FO”) is a fair settlement as it meets the criteria within 40 CFR § 22.18(b)(2) of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits” (“CROP”).

Pursuant to 40 CFR § 22.18(b)(3), no settlement nor consent agreement shall dispose of any proceeding without a final order from the Regional Judicial Officer, ratifying the parties’ agreement. Therefore, because the agreement meets the requirements set out in 40 CFR § 22.18(b)(2), we request you to review and issue the final order of approval set forth in the attached CA/FO.

Respectfully submitted,



Cynthia Psoras
Assistant Regional Counsel
U.S. EPA Region 2

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, New York 10007-1866

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**Docket No.
SDWA-02-2015-8901**

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, on the persons listed below in the following manner:

Original and One Copy
By Hand-Delivery to:

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:

Scott P. Outtrim, Town Supervisor
Town of Florence
11897 Thompson Corners – Florence Road
Camden, NY 13316

DATE:

6/29/17

NAME:

Cynthia Boras