

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

IN THE MATTER OF:

City of New Brunswick
78 Bayard Street
New Brunswick, New Jersey 08901

NJPDES Permit No. NJG0150550

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-02-2024-3308

I. PRELIMINARY STATEMENT

Complainant, the United States Environmental Protection Agency (“EPA”), and the City of New Brunswick (“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 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 Jersey Department of Environmental Protection (“NJDEP”) New Jersey Pollutant Discharge Elimination System (“NJPDES”) R9- Tier A Municipal Stormwater General Permit, NJ0141852, for stormwater discharges from Municipal Separate Storm Sewer Systems (“MS4s”) for the MS4 that the Respondent owns.
3. EPA notified the State of New Jersey regarding this action and offered an opportunity for the State of New Jersey 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.

III. TERMS OF SETTLEMENT

1. For the purpose of this proceeding, Respondent:
 - a. Admits the jurisdictional allegations of this CA/FO and that the Complaint states a claim upon which relief can be granted against Respondent;
 - b. Neither admits nor denies the factual and legal allegations contained herein, and is entering this CA/FO to resolve disputes amicably and without further resort to litigation;
 - c. Waives its right to contest the allegations, to a judicial or administrative hearing, or to appeal this CA/FO and waives any defenses it might have as to jurisdiction and venue; and
 - d. Pursuant to Section 309(g) of the CWA, 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 fifteen thousand six hundred dollars (\$15,600.00).
 - e. 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 IV.A below as well as to the performance of a SEP (described in greater detail at IV.B below).
- A. **Civil Penalty**
 2. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of fifteen thousand six hundred dollars (\$15,600), which Respondent shall be liable to pay in accordance with the terms set forth below.
 3. 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 Finance Center Contacts: Craig Steffen (513-487-2091) | U.S. Postal Service | UPS, Federal Express, or Overnight Mail |
| | US Environmental Protection Agency Fines and Penalties Cincinnati Finance Center PO Box 979077 St. Louis, MO 63197-9000 | U.S. Bank Government Lockbox 979078 3180 Rider Trail S. Earth City, Mo. 63045 314-418-1028 |
| 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) Details on format and content of wire transfer – www.epa.gov/ocfo/finservices/required_info.htm | 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:

Douglas McKenna, Manager
Water Compliance Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 2
McKenna.Douglas@epa.gov

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
Maples.Karen@epa.gov

Payment must be received at the above address no later than thirty (30) calendar days after the date of signature of the Final Order (at the end of this document). 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 Section 309(g)(9) of the CWA, 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.
4. 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.

B. Supplemental Environmental Project

5. Respondent shall solicit public bids to construct the Rain Garden Supplemental Environmental Project ("SEP") (See Exhibit A), as previously approved by EPA, in December 2024 or January 2025 and commence construction of same between March 2025 and May 2025.
6. Respondent shall complete construction of the SEP no later than September 1, 2025.
7. Respondent shall complete the SEP, as described in Exhibit A, as follows:
 - a. Construct a 1,200 square foot rain garden with an underdrain between Courtland Street, Louis Street, and Central Avenue in New Brunswick, New Jersey.

- b. Respondent's SEP shall be designed to prevent untreated stormwater, potentially carrying with it petroleum and other pollutants typical of stormwater run-off, from entering the storm sewer system. By keeping the untreated stormwater from entering the storm system, the pollutants will not be discharged into the New Brunswick MS4, which discharges to the Raritan River, the Delaware and Raritan Canal, Mile Run, and Lawrence Brook, all waters of the United States.
 - c. The SEP relates to the underlying violations at issue in this CA/FO, as the SEP is designed to reduce the overall risk to public health and the environment to which the violations at issue contribute.
- 8. The parties agree that the SEP is intended to secure significant environmental protection or public health improvements, namely the reduction of polluted stormwater discharges to waters of the United States.
- 9. **SEP Cost and Documentation:** Respondent shall spend at least twenty-seven thousand eighty dollars (\$27,080.00) toward implementing the SEP set forth above.
 - a. Respondent's cost may include testing, design, engineering, and construction of the approved SEP.
 - b. After receiving an executed copy of the Consent Agreement and Final Order, Respondent shall provide quarterly documentation to the EPA of the Fair Market Value (FMV) of the expenditures made in connection with the SEP during the preceding quarter, if any. Quarterly reports shall be due on the 15th day of the month following the preceding calendar quarter (e.g., January 15th for October to December, April 15th for January to March, July 15th for April to June, October 15th for July to September) following execution of the Consent Agreement and Final Order and continue until such time as the SEP Completion Report is submitted. The SEP Completion Report shall be due by the end of the quarter after the final approved SEP has been completed.
- 10. **Certification:** With regard to the SEP, Respondent certifies the truth and accuracy of each of the following:
 - a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the total cost to implement the SEP will be at least \$27,080;
 - b. That, as of the date of executing this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
 - c. That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Agreement;
 - d. That Respondent has not received and will not receive credit for the SEP in any other enforcement action;

- e. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity; and
 - f. Respondent certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.
11. **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.
12. **SEP Completion Report:** Respondent shall submit a SEP Completion Report to EPA by the end of the quarter following SEP completion. The SEP Completion Report shall contain the following information:
- a. A detailed description of the SEP as implemented, including, but not limited to: documentation pertaining to the testing, engineering, design and construction;
 - b. Itemized Costs;
 - c. Certification that the SEP has been fully implemented pursuant to the provisions of this CA/FO; and
 - d. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollution reductions, if feasible).
13. Respondent agrees that failure to submit the SEP Completion Report required by Paragraph 12, above, shall be deemed a violation of this CA/FO and Respondent shall become liable for stipulated penalties pursuant to Paragraph 21, below.
14. In itemizing FMV 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, receipts, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment has been 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.
15. Respondent agrees that EPA may inspect the site of the SEP at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein.
16. Under no circumstances shall Respondent use federal grants, low-interest federal loans, or other forms of federal financial assistance or non-financial assistance to perform the SEP. Respondent agrees that use of such prohibited assistance shall be deemed a violation of this CA/FO and Respondent shall become liable for stipulated penalties pursuant to Paragraph 21, below.

17. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this Consent Agreement, Respondent shall, by its officers, 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.”

18. 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 after a request for such information.

19. **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.”

20. **EPA Acceptance of SEP Completion Report:**

- a. After receipt of the SEP Completion Report described in Paragraph 12, above, EPA will notify Respondent, in writing, regarding: (i) any deficiencies in the SEP Completion Report 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 21, below.
- b. If EPA elects to exercise option (a)(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 the completed SEP itself, EPA shall give 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 CA/FO. 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 21, below.

21. **Stipulated Penalties:**

- a. In the event that Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEP described in Paragraph 7 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 9 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
 - i. for failure to submit any Quarterly Report in accordance with Paragraph 9(b) above, Respondent shall pay a stipulated penalty in the amount of one hundred and fifty (\$150.00) dollars for each day until the report is submitted;
 - ii. for failure to submit the SEP Completion Report required by Paragraph 12 above, Respondent shall pay a stipulated penalty in the amount of two hundred and fifty (\$250.00) dollars for each day after the SEP Completion Report was due until the report is submitted;
 - iii. if the SEP is satisfactorily completed in accordance with Paragraph 7 above, but Respondent's SEP value of the expenses incurred is less than the agreed upon amounts, Respondent shall pay a stipulated penalty equal to the difference between the amount of eligible SEP costs incurred by the Respondent and \$27,080;
 - iv. if the SEP is not satisfactorily completed in accordance with Paragraph 7 above; but (a) Respondent certifies, with supporting documentation, the amount of eligible SEP value and 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 \$27,080; and
 - v. if Respondent halts or abandons work on the SEP, Respondent shall pay a stipulated penalty of \$1,000 and shall also pay the difference between eligible value of the SEP costs incurred and \$27,080.
- b. Respondent shall pay stipulated penalties within thirty (30) calendar 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." Respondent shall use the same methods of payment described in Paragraph 2 above.
- c. Interest and late charges on stipulated penalties shall be paid as stated in Paragraph 3 above.
- d. Respondent shall send proof of stipulated penalty payments as specified in Paragraph 3 above.
- e. The EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Consent Agreement.

- f. Failure to pay the stipulated 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. Interest and late charges on stipulated penalties shall be paid as stated in Paragraph 3 above.

22. **Unexpected Circumstances Which Delay the Performance of a SEP:**

- a. If any event occurs which causes or may cause delays in the completion of the SEP as required under this Agreement, Respondent shall notify EPA in writing not more than ten (10) days after the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and shall constitute a waiver of Respondent's right to request an extension of its obligation under this Agreement based on such incident.
- b. If the parties agree that the delay or anticipated delay in compliance with this Agreement has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.
- c. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this CA/FO has been or will be caused by circumstances beyond the control of Respondent, EPA will notify Respondent in writing of its decision and any delays in the completion of the SEP shall not be excused.
- d. The burden of proving that any delay is caused by circumstances beyond the control of Respondent shall rest with Respondent. Increased costs or expenses associated with the implementation of actions called for by this Agreement shall not, in any event, be a basis for changes in this Agreement or extensions of time under section (b) of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

IV. OTHER TERMS AND CONDITIONS

- 1. Respondent shall submit all notices and reports required by this CA/FO by first class mail and via email to:

Douglas McKenna, Manager
Water Compliance Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866
McKenna.Douglas@epa.gov

And


Katherine Green
Water Compliance Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866
Green.Katherine@epa.gov

2. Respondent knowingly and explicitly waives its right under Section 309(g) of the Act, 33 U.S.C. § 33 U.S.C. § 1319(g), to request or to seek any Hearing on or Judicial Review of the Complaints consolidated herein or on any of the allegations therein asserted, on this Consent Agreement or the Findings of Fact and Conclusions of Law set forth herein, or on the accompanying Final Order.
3. This CA/FO shall apply to and be binding upon Respondent, as well as applying to and binding upon the Respondent's officers, directors, and employees, in their capacities as representatives of Respondent as well as on the Respondent's successors and assigns, including, but not limited to, Respondent's subsequent purchasers.
4. 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, nor waiver of any defense, objection or response the Respondent may assert in response to any claim that the Agreement is violated.
5. 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, 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.
6. This CA/FO 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 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.
7. 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.
8. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CA/FO.

9. Respondent consents to service upon Respondent by a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

Signed: _____
Kathleen Anderson, Director
Enforcement and Compliance Assurance Division

Dated: 12-2-2024

Signed:  _____
Michael K. Drulis, City Administrator
New Brunswick, New Jersey

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

IN THE MATTER OF:

City of New Brunswick
78 Bayard Street
New Brunswick, New Jersey 08901

NJPDES Permit No. NJG0150550

Respondent.

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

FINAL ORDER

Docket No. CWA-02-2024-3308

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 Director of the Enforcement and Compliance Assurance Division, 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.

Kathleen Anderson, Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 2
290 Broadway – 21st Floor
New York, New York, 10007-1866