

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

In the Matter of:

Derry Township Municipal Authority
670 Clearwater Road
Hershey, PA 17033-2453,

Respondent

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

EPA Docket No. CWA-03-2010-0265

**CONSENT AGREEMENT
and FINAL ORDER**

I. PRELIMINARY STATEMENT and STATUTORY AUTHORITY

1. This Consent Agreement and Final Order ("CAFO") is entered into by the Director, Water Protection Division, U.S. Environmental Protection Agency, Region III ("EPA" or "Complainant"), and Derry Township Municipal Authority ("Derry" 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 June 30, 2010 ("the Complaint").
2. Pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and the subsequent 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 between March 15, 2004 and January 12, 2009 subject the violator to civil penalties in an amount not to exceed \$11,000 per day for each day the violation continues, up to a total penalty amount of \$32,500; violations of the Act that occurred 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 \$37,500.

II. FINDINGS OF FACT AND JURISDICTIONAL ALLEGATIONS

3. For purposes of this CAFO, Respondent neither admits nor denies the factual allegations contained in Paragraphs 9 through 26 of the Complaint.
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 has violated Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and 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. Respondent also hereby expressly waives its right to appeal the proposed final order accompanying this CAFO.
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 violations, 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 eighteen thousand five hundred U.S. Dollars (\$18,500) in full and final settlement of EPA's claims for civil penalties for the violations alleged herein and in the Complaint.
12. Respondent shall pay the total administrative civil penalty of eighteen thousand five

hundred U.S. Dollars (\$18,500) for the violations alleged herein and in the Complaint within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c). Payment shall be made by one of the following methods set forth below.

- (a) By check or certified check made payable to "United States Treasury" and sent via one of the following methods:

By regular mail:

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

Contact Eric Volck (513-487-2105)

By overnight delivery:

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

Contact: Eric Volck (513-487-2105)

- (b) By wire transfer to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045

(Field Tag 4200 of the wire transfer message should read:
"D 68010727 Environmental Protection Agency")

- (c) By Automated Clearinghouse (ACH) transfer for receiving U. S. currency (also known as REX or remittance express) to:

PNC Bank
ABA = 051036706
Environmental Protection Agency
Account Number: 310006
CTX Format
Transaction Code 22 - checking
808 17th Street, NW
Washington, D.C. 20074

Contact for ACH: John Schmid (202-874-7026)

- (d) By on line (internet) payment through the On Line Payment Option, available through the Department of Treasury. This payment option can be accessed from:

WWW.PAY.GOV
Enter sfo 1.1 in the search field
Open form and complete required fields.

Additional payment guidance is available at:
http://www.epa.gov/ocfo/finservices/make_a_payment.htm

13. Respondent shall send notice of such payment, including a copy of the check, receipt, or other evidence of payment, to each of the following:

Regional Hearing Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

-and-

Ms. Kelly Gable (3RC20)
Office of Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

14. 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. This CAFO does not constitute a waiver, suspension, or modification of the requirements

of the CWA, 33 U.S.C. §§ 1251, *et seq.*, or of any regulations promulgated thereunder.

15. 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).

16. This Consent Agreement and the accompanying 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.
17. 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, of the statutes and regulations upon which this

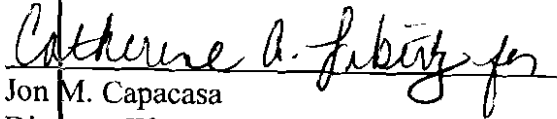
- CAFO is based, or of any other applicable provision of law.
18. The penalty specified above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.
 19. Entry of this CAFO is a final settlement of all civil violations alleged in the Complaint. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in the Complaint if EPA obtains evidence that the information and/or representations of 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, that EPA may have under law or equity in such event.
 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, 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, absent a petition for review, 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).

SO ORDERED, pursuant to 33 U.S.C. § 1319(g), and 40 C.F.R. Part 22,

this 7 day of March, 2011.



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

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 fully-executed Consent Agreement and Final Order, and that copies of the same were sent to the following individuals in the manner described below:

By hand delivery:

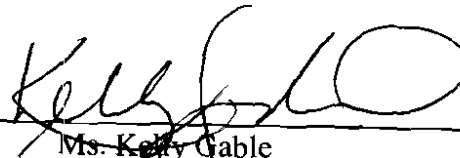
Regional Judicial Officer Renee Sarajian
EPA Region III
1650 Arch St.
Philadelphia, PA 19103

By first class, certified mail, return receipt requested:

Mr. E. Christopher Abruzzo
Chairman
Derry Township Municipal Authority
670 Clearwater Road
Hershey, PA 17033

Date:

3/10/2011



Ms. Kelly Gable
Assistant Regional Counsel
US EPA Region III