

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

In the Matter of:

Upper Southampton Sewer Authority
P.O. Box 481, 945 Street Rd
Southampton, PA 18966

Respondent.

Proceeding Under Class II and
Section 309(g)(2)(B) of the

Docket No.: CWA-03-2008-0116

**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, United States Environmental Protection Agency, Region III ("Complainant") and the Upper Southampton Sewer Authority ("USSA," "the Authority" 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 having agreed to settlement of violations of the Clean Water Act by Respondent, this CAFO simultaneously commences and concludes this action pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2) & (3).

2. Pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency ("EPA") is authorized to assess administrative penalties against any person who violates any NPDES permit condition or limitation in an amount not to exceed \$10,000 per day for each day of violation, up to a total penalty amount of \$125,000.

3. Pursuant to the Debt Collection Improvement Act of 1996, codified at 28 U.S.C. § 2461, any person who has violated any NPDES permit condition or limitation after January 30, 1997 is liable for an administrative penalty not to exceed \$11,000 per day for each day of violation occurring between January 30, 1997 and March 15, 2004 up to a total penalty amount of \$137,500.

4. Pursuant to the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective March 15, 2004), any person who has violated any NPDES permit

condition or limitation after March 15, 2004 is liable for an administrative penalty not to exceed \$11,000 per day for each day of violation occurring after March 15, 2004 up to a total penalty amount of \$157,500.

II. FINDINGS OF FACT and CONCLUSIONS OF LAW

5. The Authority is a subdivision of the Commonwealth of Pennsylvania, formed under the laws of the Commonwealth of Pennsylvania, and is a "municipality" within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4), and therefore a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.

6. USSA owns and operates a wastewater collection system ("the Collection System") located on Street Road in Upper Southampton, Bucks County, Pennsylvania which collects and conveys sanitary wastewater, including sewage from residences and business located in Upper Southampton, Northampton and Lower Southampton Townships, Bucks County, Pennsylvania. The Collection System includes pipes, force mains, sanitary sewer lines, pump stations, manholes, and other real and personal property and appurtenances thereto designed to convey sanitary wastewater (including sewage) to the collection system.

7. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the "discharge of pollutants" except in compliance with certain sections of the Act, including Section 402 of the Act, 33 U.S.C. § 1342.

8. Title 40 C.F.R. § 122.2 defines "discharge of a pollutant" to include any addition of any pollutant or combination of pollutants to waters of the United States from any point source.

9. On June 15, 2006, EPA conducted an inspection of the Collection System.

10. During the June 15, 2006 inspection, the EPA inspector determined that the Mill Creek pump station, the Henry Road sewer main and the County Line pump station are part of the USSA System.

11. On July 31, 2002, an overflow of approximately 1.1 million gallons to Mill Creek from the USSA Collection System occurred due to a pressure surge which cracked a section of 20-inch force main on Henry Avenue.

12. From February 22 and 23, 2003, the Mill Creek pump station overflowed to Mill Creek and the County Line pump station overflowed.

13. From June 20 to 22, 2003, the Mill Creek pump station overflowed to Mill Creek.
14. On April 4, 2005, the Mill Creek pump station experienced sanitary sewer overflows to Mill Creek.
15. On October 31, 2006, the Mill Creek pump station experienced sanitary sewer overflows to Mill Creek.
16. Respondent does not and at all relevant times has not had a permit for the above-cited overflows to Mill Creek.
17. Mill Creek is a "navigable water" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7) because it is a "water of the United States" within the meaning of 40 C.F.R. § 122.2.
18. The sanitary sewer overflows from the Collection System, as described above, constitute unauthorized discharges of pollutants in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

III. CONSENT AGREEMENT AND FINAL ORDER

19. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law set forth in Section II, above, and waives any defenses it might have as to jurisdiction and venue.
20. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.
21. 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.
22. Respondent certifies by its signature hereon that from November 1, 2006 through December 31, 2007, it was in compliance with each of the relevant provisions of the Act applicable to it.
23. Each party to this action shall bear its own costs and attorney fees.

24. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.

25. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order. In addition, pursuant to Section 309(g)(1)(A), EPA has consulted with the Commonwealth of Pennsylvania regarding this action, and will mail a copy of this document to the appropriate Pennsylvania official upon its execution.

26. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the violation(s), 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 HEREBY CONSENTS to a civil penalty in the amount of twenty-seven thousand dollars (\$27,000) in full and final settlement of EPA's claims for civil penalties for violations between July 31, 2002 and December 31, 2007, as alleged herein.

27. The \$27,000 penalty as provided for in paragraph 27 shall be divided as follows: (a) \$16,200 in the payment by cashiers or certified check and (b) \$10,800 by the implementation of a supplemental environmental project ("SEP").

28. Respondent shall pay an administrative civil penalty of sixteen-thousand two-hundred dollars (\$16,200) for the violations alleged in this CAFO within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c), by mailing a cashiers or certified check for the penalty to "Treasurer, United States of America" along with the signed CAFO to the following address:

Regional Hearing Clerk
US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

29. Respondent shall send notice of such payment, including a copy of its check, to the Regional Hearing Clerk at the following address:

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

-and-

Lori G. Kier
Mail Code 3RC20
Office of Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

30. 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. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251, *et seq.*, or any regulations promulgated there under.

31. 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)).

32. Respondent shall perform a Supplemental Environmental Project ("SEP") as described in Attachment "A" hereto.

33. The total expenditure for performance of the SEP shall be at least ten-thousand eight-hundred dollars (\$10,800).

34. Respondent hereby certifies that there is no current requirement under any federal, state or local law or regulation for Respondent to perform or develop the SEP within the next five years; nor is Respondent required to perform or develop the SEP by any agreement, grant, or as injunctive relief in this or any other legal proceeding or in compliance with state or local requirements. Respondent further certifies that it is unaware of any such requirements applicable to PADEP Respondent further certifies that it has not received, and is not presently negotiating to receive credit for the SEP activities in any other enforcement action in any form.

35. Respondent agrees that EPA may request copies of any materials related to the SEP, at any time, upon reasonable advance notice to Respondent, to confirm that the SEP is being or has been performed in accordance with this CAFO. Respondent further agrees to provide requested information to EPA within fourteen (14) business days of a reasonable request. The EPA reserves all existing inspection authority.

36. Within 60 days of completion of all SEP work, Respondent shall provide written notice to EPA in the form of a SEP Report as described in Attachment "B" hereto.

37. Following receipt of the SEP Report described above, EPA will do one of the following: (a) accept the SEP Report; (b) reject the SEP Report and notify Respondent in writing of the deficiency in the SEP Report and grant Respondent an additional thirty (30) days from receipt of such notice, to correct any deficiency; or (c) reject the SEP report and seek stipulated penalties in accordance with paragraph 41 of this CAFO.

38. If EPA elects to exercise option (b) as described in the preceding paragraph, it will permit Respondent the opportunity to object in writing to the notification of deficiency or disapproval 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. If agreement cannot be reached within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondent.

39. The determination of whether the SEP has been satisfactorily completed (i.e., pursuant to the terms of the agreement) and whether the respondent has made a good faith, timely effort to implement the SEP is in the sole discretion of EPA.

40. If Respondent fails to comply with any of the SEP related terms of this CAFO, Respondent shall be liable for the following stipulated penalties:

- (a) If EPA determines that the SEP has been satisfactorily completed, but that Respondent in fact spent less than \$10,800 to perform the SEP, Respondent shall pay a stipulated penalty equal to the difference between \$10,800 and the amount actually spent.
- (b) If Respondent fails to submit the SEP Report by the date set forth in paragraph 37, Respondent shall pay an additional penalty of \$25 per day for each such day the Report is not submitted.

41. Respondent shall maintain legible copies of documentation of the underlying data for any and all reports submitted to EPA pursuant to this CAFO. Respondent shall provide documentation of any such underlying data to EPA within fourteen (14) days of a request for such information. All documents or reports, including the SEP Report, that are submitted to EPA, pursuant to this CAFO, shall be signed by a principal executive officer or ranking elected official of Respondent, or a person who has been duly authorized as a representative of the executive officer or elected official in accordance with 40 C.F.R. Part 122.22(b), and shall include the following certification that the information contained in such document or report is true, accurate, and not misleading:

I 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.

42. Following Respondent's issuance of its SEP Report, and EPA's review and approval, EPA will issue to Respondent a Certification of Completion of the SEP, and will also issue to Respondent a Certification of CAFO Termination.

43. 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. §§ 301 *et seq.*, the regulations promulgated there under, 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.

44. 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 or of the statutes and regulations upon which this CAFO is based or for Respondent's violation of any applicable provision of law.

45. Nothing in this CAFO shall be construed to waive or otherwise limit the ability of Respondent to raise legal and factual defenses in any future action, including but not limited to, whether the routing of flows around the sand filter is a violation of the NPDES permit.

46. The penalty specified in Paragraph 27, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

47. Entry of this CAFO is a final settlement of all civil violations alleged in this CAFO. EPA shall have the right to institute a new and separate action to recover additional civil penalties for claims made in this CAFO if EPA obtains evidence that the information and/or representations of the 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, EPA may have under law or equity in such event.

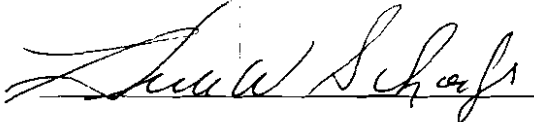
48. The undersigned representative of Respondent certifies that he or she is fully authorized by the Respondent to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

49. 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, or 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

50. Pursuant to 40 C.F.R. § 22.45, this CAFO shall be issued after a 40-day public notice period has concluded. This CAFO will become final 30 days after issuance, 33 U.S.C. § 1319(g)(4), and will become effective on that same date, 40 C.F.R. § 22.31(b).


FOR RESPONDENT UPPER SOUTHAMPTON SEWER AUTHORITY:

By: 

Name: Herbert W. Schoell Jr.

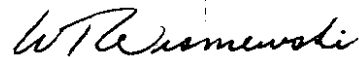
Title: Manager

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:


Jon Capacasa, Director
Water Protection Division

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

this 11 day of March, 2008.


for Donald S. Welsh
Regional Administrator

ATTACHMENT A

SUPPLEMENTAL ENVIRONMENTAL PROJECT

The Upper Southampton Sewer Authority ("USSA") voluntarily agrees to perform this Supplemental Environmental Project ("SEP") in conjunction with its entering into a Consent Agreement and Final Order ("CAFO") with the United States Environmental Protection Agency ("EPA"). The CAFO relates to overflows from the municipal sanitary sewer system operated by the USSA.

The purpose of the SEP to be performed by the USSA is to help protect source waters from contamination by educating select target audiences on the proper disposal of prescription drugs. USSA will establish an awareness campaign to educate the select target audiences in and around the Township of Upper Southampton on the proper disposal of prescription drugs. The target audiences will include local hospitals, retirement communities and schools with health programs. The awareness campaign will include the preparation and distribution of written materials that will educate members of the targeted audiences regarding the prescription drug disposal guidelines issued by the EPA, the White House Office of National Drug Control Policy and the Department of Health and Human Services. By encouraging people in the select target audiences to properly dispose of their unused, unneeded or expired prescription drugs, the SEP will protect the public health, reduce the toxicity of treated wastewater released into the environment downstream, and enhance environmental protection. The SEP is expected to cost \$13,800.00. The breakdown of the approximate costs is as follows:

Design and printing of materials for hospitals, retirement communities and local schools.....	\$8,100
Cost of newspaper advertisements and signs to publicize events for increased turnout	\$3,300
Class preparation for high school health classes (2 employees @ 8 hrs).....	\$ 600
Class time (2 employees, 1 hr. class, ½ hr. set up and breakdown x 7 classes).....	\$ 800
Cost of equipment for presentations.....	<u>\$1,000</u>
Total:	<u>\$13,800</u>

The SEP is consistent with EPA's SEP policy inasmuch as (1) the SEP is designed to improve public health and protection of the environment; (2) there is a direct relationship between the SEP and the violations addressed by the CAFO; (3) the SEP is voluntary and not required by law; (4) no work on the SEP was completed prior to the signing of the CAFO; (5) EPA will not be required to play any direct role in the performance of the SEP; and (6) the SEP involves activities to be performed by USSA.

ATTACHMENT "B"

SEP REPORT

Pursuant to Paragraph 36 of the CAFO, within 60 days of completion of all SEP work, Respondent shall provide written notice to EPA in the form of a SEP Report as described below:

1. A detailed description of the SEP as implemented, including information about audiences for outreach activities;
2. A description of any operating, implementing or performance problems encountered and the solutions thereto;
3. Itemized costs, documented by copies of purchase orders and receipts or canceled checks; and,
4. Certification that the SEP has been fully implemented pursuant to the provisions of the Consent Agreement and Final Order.

Such written notice shall be submitted to the addresses in Paragraph 29 of the CAFO.

CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by certified mail, return receipt requested, a copy of the Consent Agreement and Final Order in the matter of *In Re: Upper Southampton Sewer Authority*, Docket No. CWA-03-2008- 0116, to the following persons at the addresses below:

Herb Schoell Jr.
Manager
Upper Southampton Water & Sewer Authority
P.O. Box 481, 945 Street Rd.
Southampton, PA 18966

M. Joel Bolstein, Esquire
Fox Rothschild LLP
2700 Kelly Road, Suite 300
Warrington, PA 18976-3624

Date: 3/13/08



Lori G. Kier
Senior Assistant Regional Counsel (3RC20)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103