

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

City of Glens Falls
2 Shermantown Road
Glens Falls, NY 12801

City of Glens Falls
Wastewater Treatment Plant
SPDES Permit No. NY0029050

Respondent

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

**CONSENT AGREEMENT
AND FINAL ORDER**

DOCKET No. CWA-02-2014-3303

REGIONAL HEARING
CLERK

2014 NOV 26 AM 9:00

U.S. Environmental
Protection Agency-Reg 2

I. PRELIMINARY STATEMENT

Complainant, the United States Environmental Protection Agency (“EPA”) having filed the Complaint referenced herein on **September 30, 2014**, against Respondent, City of Glens Falls; 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” or “Agreement”) 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. 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 two violations of Section 301(a) of the CWA, 33 U.S.C. 1311, in the operation of its wastewater treatment plant located at 2 Shermantown Road in Glens Falls, New York for failing to timely file two annual Periodic Pretreatment Reports, as required by its New York State Pollutant Discharge Elimination System permit (Permit No. 0029050) issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and proposes to assess a civil penalty of eight thousand five hundred dollars (\$8,500).
3. The Complaint was public noticed from **October 9, 2014** to **November 10, 2014**, and no comments were received.

4. Respondent has not filed an Answer or requested a hearing pursuant to 40 C.F.R. Part 22.
5. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this Complaint. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the factual allegations contained in the Complaint, consents to the terms of this Agreement.
6. 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

1. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), given the nature of the alleged violations and other relevant factors in Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has determined that **two thousand eight hundred dollars (\$2,800)** is an appropriate civil penalty to settle this action.
2. Respondent shall pay the full penalty amount within thirty (30) calendar days of its receipt of the fully executed CA/FO. If the due date for payment falls on a weekend or legal federal holiday, the due date is the next business day. Payment must be received by 11:00a.m. Eastern Time to be considered received that day.
3. Payment shall be made by one of the following methods:

By cashier's or certified check. A cashier's or certified check, including the name and docket number of this case, for \$2,800, 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

Overnight Mail

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: Wire transfers should be 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: This option is available 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.

4. Respondent shall send a copy of the check, or record of payment if made by other means, immediately following payment, to:

Christopher Saporita, 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, NY 10007

and

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

5. In the event payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date (on the 1st late day, 30 days of interest will have accrued), at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received.
6. A handling charge of fifteen dollars (\$15) shall be assessed on the 31st day from the due date of any payment, and for each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date. Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
7. In addition, pursuant to Section 309(g)(9) of the Clean Water Act, 33 U.S.C. § 1319(g)(9), if any of the payments are not received by the applicable due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is twenty percent (20%) of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
8. Respondent shall not claim the penalty as a federal or other tax deduction or credit.
9. 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.

IV. OTHER TERMS AND CONDITIONS

1. Failure by Respondent to comply with any of the terms of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter to the Department of Justice for enforcement of the Agreement and for such other relief as may be appropriate.
2. This Agreement 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.
3. This Agreement constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for the violations alleged in the Complaint. Compliance with this Agreement shall not be a defense to any enforcement actions commenced pursuant to federal laws and regulations administered by EPA for violations other than those alleged in the Complaint.
4. Each undersigned representative of the parties to this Agreement certifies that she or he is fully authorized by the party represented to enter into the terms and conditions of this Agreement and to execute and legally bind that party to it.
5. The provisions of this Agreement shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns.
6. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Agreement.
7. Respondent consents to service upon it by delivery of a copy of this Agreement by mail or by an EPA employee other than the Headquarters or Regional Hearing Clerks.

FOR RESPONDENT:

BY:

Steven D. Gurler
Signature

OCTOBER 15, 2014
Date

STEVEN D. GURLER
Name (Please print)

SEWER SUPT.
Title (Please print)

FOR COMPLAINANT:

DORE LAPOSTA

Director, Division of Enforcement and Compliance Assistance
United States Environmental Protection Agency, Region 2
290 Broadway, New York, NY 10007

NOVEMBER 20, 2014
Date

V. FINAL ORDER

Pursuant to 40 C.F.R. § 22.18(a)(3), the above Consent Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. Pursuant to 40 C.F.R.

§ 22.45(c)(3), this Order shall be effective on **November 20, 2014**.



DORE LAPOSTA

Director, Division of Enforcement and Compliance Assistance
United States Environmental Protection Agency, Region 2
290 Broadway, New York, NY 10007

NOVEMBER 20, 2014
Date

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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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 EPA Internal Mail:
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, NY 10007-1866

Copy by Certified Mail Return Receipt Requested:
Steven D. Gurzler, P.E.
Water and Sewer Superintendent
City of Glens Falls
2 Shermantown Road
Glens Falls, NY 12801

11/24/14

Date

Marie St. Germain

Print Name

Marie St. Germain

Signature

Branch Secretary

Print Title