



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 27 2012

CERTIFIED MAIL 70060810000411311049
RETURN RECEIPT REQUESTED

Mr. Kenneth R. Krushenski
City Attorney, City of Oak Ridge
200 South Tulane Avenue
Oak Ridge, Tennessee 37830

Re: Proposed Consent Agreement and Final Order
Docket No. CWA-04-2012-4532(b)
National Pollutant Discharge Elimination System Permit No. TN024155
City of Oak Ridge

Dear Mr. Krushenski:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order, finalized by the U.S. Environmental Protection Agency, Region 4 and the Regional Administrator. Please make note of the provisions under Section IV. Payment.

Should you have any questions or concerns regarding this matter, please contact Mr. Dennis Sayre at (404) 562-9756 or via email at sayre.dennis@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Giattina".

James D. Giattina
Director
Water Protection Division

Enclosure

cc: Dr. Sandra Dudley
Director, Water Resources Division
Tennessee Department of Environment and Conservation

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

RECEIVED
EPA REGION IV

2012 SEP 27 AM 11:14

HEARING CLERK

IN THE MATTER OF:)
)
CITY OF OAK RIDGE) CONSENT AGREEMENT AND
OAK RIDGE, TENNESSEE) FINAL ORDER
)
RESPONDENT) DOCKET NO. CWA-04-2012-4532(b)

CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B), 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*, published at 64 Fed. Reg. 40176 (July 23, 1999) and codified at 40 Code of Federal Regulations (“C.F.R.”) Part 22.

2. The authority to take action under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), is vested in the Administrator of the United States Environmental Protection Agency (“EPA”). The Administrator has delegated this authority to the Regional Administrator, Region 4, who in turn has delegated this authority to the Director of the Water Protection Division (“Complainant”).

II. Allegations

3. At all times relevant to this action, the City of Oak Ridge, Tennessee (“Respondent”), was a municipality existing under the laws of the State of Tennessee and, therefore, a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At all times relevant to this action, Respondent owned and/or operated a wastewater treatment plant located at 200 Monterey Road, Oak Ridge, Tennessee, and its associated wastewater collection and transmission system (“WCTS”), which has been issued National Pollution Discharge Elimination System (“NPDES”) permit number TN0024155 by the State of Tennessee pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

5. To accomplish the objective of the CWA (defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), as to restore and maintain the chemical, physical and biological integrity of the nation’s waters), Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. Respondent has experienced, and continues to experience, sanitary sewer overflows (“SSOs”) in its WCTS. SSOs include discharges of untreated sanitary sewage containing pollutants to waters of the United States at locations not authorized by an NPDES permit and other releases of

untreated sanitary sewage containing pollutants that may not have reached waters of the United States as a result of improper operation and maintenance of the WCTS in violation of TDEC Rule 1200-04-05-.07(2)(c), which is incorporated by reference into Part II of the NPDES Permit.

7. The EPA alleges that the Respondent has violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), as a result of the SSOs in its WCTS which include discharges of untreated sanitary sewage containing pollutants to waters of the United States at locations not authorized by an NPDES permit and other releases of untreated sanitary sewage containing pollutants that may not have reached waters of the United States as a result of improper operation and maintenance of the WCTS in violation of TDEC Rule 1200-04-05-.07(2)(c), which is incorporated by reference into Part II of the NPDES Permit.

III. Stipulations and Findings

8. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (“CA/FO”) will simultaneously commence and conclude this matter.

9. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out above and admits the factual allegations set out above.

10. Respondent hereby waives its right to contest the allegations set out above and its right to appeal the Final Order accompanying this Consent Agreement.

11. By signing this CA/FO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each such submission, response and statement. Respondent realizes that there are significant penalties for submitting false or misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information.

12. The EPA reserves the right to assess and collect any and all civil penalties for any violation described herein to the extent that any information or certification provided by Respondent was materially false or inaccurate at the time such information or certification was provided to the EPA.

13. Complainant and Respondent agree to settle this matter by their execution of this CA/FO. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of the CWA.

IV. Payment

14. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, the EPA has determined that One Hundred Seventy One Thousand Dollars (\$171,000) is an appropriate civil penalty to settle this action. Respondent consents to the assessment of and agrees to pay the civil penalty and consents to the other conditions set forth in this CA/FO.

15. Respondent shall submit payment of the penalty specified in the preceding paragraph within thirty (30) days of the effective date of this CA/FO via a cashier's or certified check, payable to the order of "Treasurer, United States of America." The check shall reference on its face the name of Respondent and the Docket Number of this CA/FO. Such payment shall be tendered to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

16. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CA/FO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

and

Mary Mattox
U.S. Environmental Protection Agency, Region 4
Water Protection Division
Clean Water Enforcement Branch
Municipal and Industrial Enforcement Section
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

17. The penalty amount specified in Paragraph 14 above shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of Federal taxes.

18. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject Respondent to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CA/FO), attorney's fees, costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of such penalty and nonpayment penalty which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount and appropriateness of the penalty and of this CA/FO shall not be subject to review.

V. General Provisions

19. 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. Other than as expressed herein, compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by the EPA.

20. Nothing in this CA/FO shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for Respondent's violation of any federal or state statute, regulation or permit.

21. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and Respondent of all claims for civil penalties pursuant to the CWA with respect to only those violations alleged in this CA/FO. Except as otherwise set forth herein, compliance with this CA/FO shall resolve the allegations of violations contained herein. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent, or other liability resulting from violations that were not alleged in this CA/FO. Other than as expressed herein, Complainant does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

22. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.

23. This CA/FO applies to and is binding upon Respondent and its officers, directors, employees, agents, successors and assigns.

24. Any change in the legal status of Respondent, including but not limited to any transfer of assets of real or personal property, shall not alter Respondent's responsibilities under this CA/FO.

25. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CA/FO.

26. In accordance with 40 C.F.R. § 22.5, the individuals below are authorized to receive service relating to this proceeding.

For Complainant:

Michele Wetherington
Assistant Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9613

For Respondent:

Kenneth R. Krushenski
City Attorney, City of Oak Ridge
200 South Tulane Avenue
Oak Ridge, Tennessee 37830
(865) 425-3530

27. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a consent agreement and proposed final order based on comments received during the public comment period.

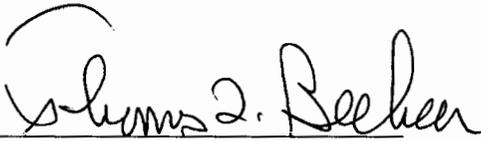
28. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of Tennessee was provided a prior opportunity to consult with Complainant regarding this matter.

VI. Effective Date

29. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

For RESPONDENT, CITY OF OAK RIDGE, TENNESSEE:



Thomas L. Beehan
Mayor
City of Oak Ridge

Date: Aug. 3, 2012

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:



James D. Giattina
Director
Water Protection Division

Date: 9/24/12

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	
)	CONSENT AGREEMENT AND
CITY OF OAK RIDGE)	FINAL ORDER
OAK RIDGE, TENNESSEE)	
)	
RESPONDENT.)	DOCKET NO. CWA-04-2012-4532(b)
_____)	

FINAL ORDER

In accordance with 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*, 40 C.F.R. Part 22, and authorities delegated to me, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9/25/2012



Gwendolyn Keyes Fleming
Regional Administrator

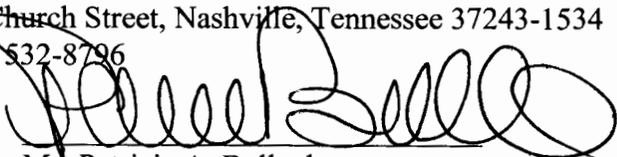
CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of the City of Oak Ridge, Tennessee, Docket No. CWA-04-2012-4532(b) (filed with the Regional Hearing Clerk on **SEP 27 2012**) was served on **SEP 27 2012**, in the manner specified to each of the persons listed below.

By hand-delivery: Michele Wetherington
Assistant Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

By certified mail,
return receipt requested: Kenneth R. Krushenski
City Attorney, City of Oak Ridge
200 South Tulane Avenue
Oak Ridge, Tennessee 37830
(865) 425-3530

Dr. Sandra Dudley, Ph.D., P.E.
Director, Water Resources Division
Tennessee Department of Environment and Conservation
6th Floor, L & C Annex
401 Church Street, Nashville, Tennessee 37243-1534
(615) 532-8796



Ms. Patricia A. Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960
(404) 562-9511

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM
=====

TO BE COMPLETE BY ORIGINATING OFFICE:

(attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Mary Mattox 8/9/12
[Name] [Date]
in the WPD/CWEB/Municipal and Industrial Section at 404-562-9733
[Office] [Telephone Number]

- Non-SF Judicial Order/Consent Decree.
USAO COLLECTS.
- Administrative Order/Consent Agreement.
FMS COLLECTS PAYMENT.
- SF Judicial Order/Consent Decree.
FMS COLLECTS.
- Other Receivables
- This is an original debt.
- This is a modification.

PAYEE: City of Oak Ridge, TN
[Name of person and/or Company/Municipality making the Payment]

The Total Dollar Amount of Receivable: \$ 171,000
[If in installments, attach schedule of amounts and respective due dates]

The Case Docket Number: CWA-04-2012-4532 (b)

The Site-Specific Superfund (SF) Account Number: _____

The Designated Regional/Headquarters Program Office: Region 4 Water Protection Division

=====

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT SECTION:

The IFMS Accounts Receivable Control Number is: _____
If you have any questions call: _____ in the Financial Management Section,
Telephone Number: _____

=====

DISTRIBUTION:

A. JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the FINAL JUDICIAL ORDER should be mailed to:

- | | | |
|--|-----------------------------|------------------------------|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice/RH 1647
P.O. BOX 7611, Benjamin Franklin Station
Washington, DC 20044 | 2. Originating Office (ORC) | 3. Designated Program Office |
|--|-----------------------------|------------------------------|

B. ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the ADMINISTRATIVE ORDER should be sent to:

- | | |
|---------------------------|------------------------------|
| 1. Originating Office | 2. Designated Program Office |
| 3. Regional Hearing Clerk | 4. Regional Counsel |

Case Docket Control Number: CWA-04-2012-4532(b)

Total Amount Due: \$ 171,000

Full payment due within 30 days of the effective date of the CAFO.

Installment payments to be paid:

Amount Due:	Date Due:
\$ _____	_____
\$ _____	_____
\$ _____	_____
\$ _____	_____