



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

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

SEP 10 2010

**CERTIFIED MAIL** 7009 1680 0002 0141 2852  
**RETURN RECEIPT REQUESTED**

Mr. Peter McGrath  
Moore & VanAllen  
100 North Tyron Street, Suite 4700  
Charlotte, North Carolina 28202

Re: Consent Agreement and Final Order  
Docket No. CWA-04-2010-4531(b)  
Unifi Kinston, LLC  
NPDES Permit No. NC0003760

Dear Mr. McGrath:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order that has been finalized by the U.S. Environmental Protection Agency and the Regional Judicial Officer. Please make note of the provisions under Section IV. Payment.

Should you have any questions or concerns regarding this matter, please contact Ms. Mary Millner at (404) 562-9792.

Sincerely,

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

James D. Giattina  
Director  
Water Protection Division

Enclosure

cc: Coleen Sullins  
North Carolina Department of Environment  
and Natural Resources

Internet Address (URL) • <http://www.epa.gov>

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: )

UNIFI KINSTON, LLC )

Respondent. )

) CONSENT AGREEMENT AND  
) FINAL ORDER

) Docket No.: CWA-04-2010-4531(b)

2010 SEP 10 PM 2:19  
HEARING CLERK  
EPA REGION 4

**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), codified at 40 Code of Federal Regulations ("C.F.R.") Part 22 ("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 redelegated this authority to the Director of the Water Protection Division, ("Complainant").

**II. Allegations**

3. At all times relevant to this action, Unifi Kinston, LLC ("Respondent"), was a corporation duly organized and existing under the laws of the State of North Carolina 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 polymer fiber manufacturing facility ("the Facility") located at 4693 Highway 11 North in Kinston, North Carolina, operating under National Pollutant Discharge Elimination System ("NPDES") Permit Number NC0003760 ("Permit"). The facility is currently owned by E.I. DuPont de Nemours and Company ("DuPont"). On February 29, 2008, DuPont and Respondent signed an agreement for sale of the Facility. On March 20, 2008, the transaction for sale closed and ownership of the facility transferred from Respondent to DuPont. Respondent's operations ceased at the Facility in October 2007.

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 an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes an NPDES Permit Program authorizing EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants into navigable waters subject to specific terms and conditions. EPA has granted the State of North Carolina, through the Department of Environment and Natural Resources ("NCDENR"), approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. NCDENR issued NPDES Permit No. NC0003760 ("Permit") to Respondent for the discharge of its treated process and sanitary wastewaters, remediated groundwater, treated steam condensate, treated landfill leachate, stormwater, and non-contact cooling water from six outfalls. The permit became effective on November 1, 2006, and expired on December 31, 2007. Because a permit renewal application was submitted by Respondent to NCDENR in a timely manner prior to expiration, the expired permit remained active until issuance of a new permit.

8. The Permit requires compliance with the effluent limits set forth in the Permit. To demonstrate compliance Respondent monitored its discharges and submitted monthly Discharge Monitoring Reports ("DMRs") to NCDENR describing the results of the monitoring.

9. The DMRs submitted to NCDENR by Respondent, while it was the owner of the Facility, indicate that Respondent discharged levels of mercury in excess of the total mercury limitation established in its Permit. Respondent exceeded its mercury limits in its Permit from Outfall 002 in July 2007 and from Outfall 003 during the months January, April, and October 2006 and June – September 2007.

10. Therefore, Respondent has violated Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342, by failing to comply with the Permit and for discharges above the limits allowed by the Permit.

### **III. Stipulations and Findings**

11. 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.

12. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out above and neither admits nor denies the factual allegations set out above.

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

14. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CA/FO and consents to the other conditions set forth in this CA/FO.

15. 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.

16. 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 EPA.

17. 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**

18. 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, EPA has determined that Forty Thousand Dollars (\$40,000) is an appropriate civil penalty to settle this action.

19. 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

20. 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  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

and

Ms. Mary Mattox  
U.S. Environmental Protection Agency - Region 4  
Water Protection Division  
Clean Water Enforcement Branch  
West NPDES Enforcement Section  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

21. The penalty amount specified in Paragraph 18 above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

22. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by the Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject the 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**

23. 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.

24. Nothing in this CA/FO shall be construed as prohibiting, altering, or in any way limiting the ability of 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 agreement is based, or for Respondent's violation of any federal or state statute, regulation or permit.

25. 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 the 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.

26. 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.

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

28. 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.

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

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

For Complainant:

Ms. Wilda Cobb  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303  
(404) 562-9530

For Respondent:

Mr. Peter McGrath  
Moore & VanAllen  
Suite 4700  
100 North Tyron Street  
Charlotte, North Carolina 28202  
(704) 331- 1081

31. 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.


32. 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 North Carolina was provided a prior opportunity to consult with Complainant regarding this matter.

**VI. Effective Date**

33. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk pursuant to 40 C.F.R. § 22.31(b).

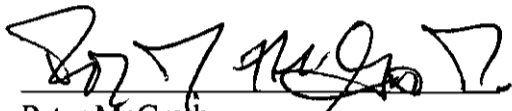
**AGREED AND CONSENTED TO:**

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:

  
\_\_\_\_\_  
James D. Giattina  
Director  
Water Protection Division  
U.S. EPA, Region 4

Date: 8/12/10

For RESPONDENT, UNIFI KINSTON, LLC:

  
\_\_\_\_\_  
Peter McGrath  
Moore & VanAllen

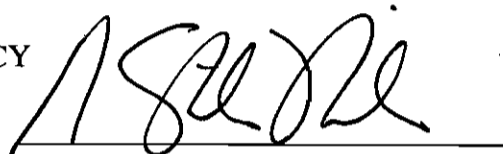
Date: July 22, 2010

**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 forgoing 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: 9/9/2010



A. Stanley Meiburg  
Acting Regional Administrator  
U.S. EPA, Region 4



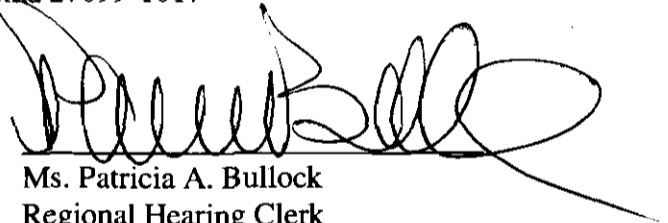
**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of **Unify Kinston, LLC**, Docket No. **CWA-04-2010-4531(b)** (filed with the Regional Hearing Clerk on SEP 10 2010, 2010) was served on SEP 10 2010, 2010, in the manner specified to each of the persons listed below.

By hand-delivery: Ms. Wilda Cobb  
Associate Regional Counsel  
U.S. EPA, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303

By certified mail,  
return receipt requested: Mr. Peter McGrath  
Moore & VanAllen  
Suite 4700  
100 North Tyron Street  
Charlotte, North Carolina 28202

Ms. Coleen H. Sullins  
Director, Division of Water Quality  
North Carolina Department of Environment  
and Natural Resources  
1617 Mail Services Center  
Raleigh, North Carolina 27699-1617



Ms. Patricia A. Bullock  
Regional Hearing Clerk  
U.S. EPA, Region 4  
61 Forsyth Street, SW  
Atlanta, Georgia 30303  
(404) 562-9511

**EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM**

**TO BE COMPLETED BY THE ORIGINATING OFFICE:**

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

This form was originated by: Mary Mattox on 8/3/10  
(Name) (Date)

in the WPD/CWEB/West NPDES Enforcement Section at (404) 562- 9733  
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree  
USAO COLLECTS

Administrative Order/Consent Agreement  
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree  
DOJ COLLECTS

Oversight Billing - Cost Package required:  
Sent with bill

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: Unifi Kinston, LLC, Kinston, NC  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 40,000  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CWA-04-2010-4531(b)

The Site Specific Superfund Account Number: \_\_\_\_\_

The Designated Regional/Headquarters Program Office: Water Protection Division

**TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

The IFMS Accounts Receivable Control Number is: \_\_\_\_\_ Date \_\_\_\_\_

**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<br>Environmental Enforcement Section<br>Department of Justice RM 1647<br>P.O. Box 7611, Benjamin Franklin Station<br>Washington, D.C. 20044 | 2. Originating Office (EAD)  |
|  | 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 to:

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