

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, New York 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG 2
2013 DEC 12 P 4: 18
REGIONAL HEARING
CLERK

IN THE MATTER OF:

Serafini Nissan-Volvo
3101 Vestal Parkway East
Steward Road Building
Vestal, NY 13350

Respondent

Proceedings under Section 1423(c)
of the Safe Drinking Water Act, 42
U.S.C. §300h-2(c)

**CONSENT AGREEMENT
AND
FINAL ORDER**

**DOCKET NO.
SDWA-02-2013-8901**

CONSENT AGREEMENT

The Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency ("EPA"), issued a "Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty and Notice of Opportunity to Request a Hearing" ("Complaint") to Respondent, Serafini Nissan-Volvo on September 24, 2013.

Complainant and Respondent (collectively, "the Parties"), having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order ("CA/FO") 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:

I. PRELIMINARY STATEMENT

1. EPA initiated this proceeding to achieve compliance with the Safe Drinking Water Act ("SDWA" or "Act") pursuant to Section 1423(c) of the Act, 42 U.S.C. §300h-2(c).
2. The Complaint alleges violations of the SDWA Part C – Underground Injection Control, as the violations pertain to a Class V injection well located at 3101 Vestal Parkway East, NY 13350. The Complaint specifically alleges a violation of 40 C.F.R. §144.11 for injections without authorization and a violation of 40 C.F.R. §144.12 for injections which may endanger an

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underground source of drinking water. The Complaint alleges that the Class V well is owned and operated by Respondent.

3. This action was public noticed between October 18, 2013 and November 18, 2013.
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 the Complaint. Respondent waives any defenses Respondent might have as to jurisdiction and venue, and, without admitting or denying the allegations contained in the Complaint, consents to the terms of this Consent Agreement and Final Order.
6. Respondent hereby waives Respondent's rights to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint or on any terms of this Consent Agreement and Final Order.

II. TERMS OF SETTLEMENT

A. Payment of Civil Penalty

1. Pursuant to Section 1423(c) of the Safe Drinking Water Act, 42 U.S.C. §300h-2(c), EPA has considered statutory factors, including the seriousness of the violation(s), the economic benefit (if any) resulting from the violation(s), the history of such violation(s), the good-faith efforts to comply with the applicable requirements, and other matters as justice may require.
2. EPA has determined that an appropriate civil penalty to settle this action is in the amount of **Four Thousand Seventy Eight (\$4,078.00) Dollars**.
3. For the purpose of settlement, Respondent consents to the issuance of this Consent Agreement, consents to the payment of the civil penalty cited in Paragraph 2, above.
4. Not more than forty five (45) days after the Effective Date (*see* Final Order) of the executed Final Order, Respondent shall pay the penalty of **Four Thousand Seventy Eight (\$4,078) Dollars** by cashier's or certified check or by Electronic Fund Transfer ("EFT"). If the payment is paid by check, then the check shall be payable to the "Treasurer, United States of America". The check shall be identified with a notation thereon listing the following: **IN THE MATTER OF SERAFINI NISSAN-VOLVO**, and shall bear thereon **Docket Number SDWA-02-2013-8901**. This check shall be mailed to:

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

If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- a. Amount of Payment
- b. SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- c. Account Code for Federal Reserve Bank of New York receiving payment: 68010727
- d. Federal Reserve Bank of New York ABA routing number: 021030004
- e. Field Tag 4200 of the Fedwire message should read "D68010727 Environmental Protection Agency"
- f. Name of Respondent: Serafini Nissan-Volvo
- g. Case Number: SDWA-02-2013-8901

Such EFT must be received on or before 45 days after the Effective Date (*see* Final Order) of this CA/FO.

Whether the payment is made by check or by EFT, Respondent shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Kara Murphy, Esq.
Assistance Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
(212) 637-3211

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

5. Payment must be received on or before forty five (45) calendar days after the Effective Date (*see* Final Order). The date by which payment must be received shall hereafter be referred to as the "due date".
 - a. Failure to pay the penalty in full according to the above provisions will result in a referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
 - b. Further, if payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. §3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of

\$15.00 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty will be applied on any principal amount not paid within 90 days of the due date.

- c. In addition, pursuant to Section 1423(c)(7) of the Safe Drinking Water Act, 42 U.S.C. §300h-2(c)(7), if payment is not received by the due date, a civil action may be commenced in Federal District Court to recover the amount assessed, plus costs, attorneys' fees and interest at currently prevailing rates from the Effective Date (*see* Final Order). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.
 - d. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
6. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondent's federal or state taxes.

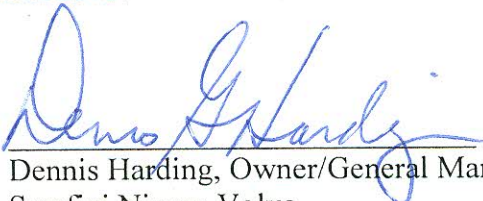
III. GENERAL PROVISIONS

1. This Consent Agreement and Final Order shall apply to and be binding on Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns, including but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve Respondent of its obligations to comply with the CA/FO.
2. Respondent waives any right Respondent may have pursuant to 40 C.F.R. §22.8 or statute to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that the Administrator accept this Consent Agreement and issue the accompanying Final Order.
3. Violations of the terms of the Final Order after its Effective Date (*see* Final Order), may subject Respondent to further enforcement action, including a civil action for enforcement of the Final Order under Section 1423(b) of the Act, 42 U.S.C. §300h-2(b), and civil and criminal penalties for violations of the compliance terms of the Final Order under Section 1423(b)(1) and (2) of the Act, 42 U.S.C. §300h-2(b)(1) and (2).
4. This Consent Agreement and Final Order shall not relieve Respondent of Respondent's obligations 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.
5. Nothing in this Consent Agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Consent Agreement or of the statutes and regulations upon which

this Consent Agreement is based, or for Respondent's violation of any applicable provision of law.


6. Issuance of the Final Order is not an election by EPA to forego any civil or criminal action otherwise authorized under the Act.
7. This Consent Agreement and Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Safe Drinking Water Act for the violations alleged in the Complaint. Nothing in this Consent Agreement and Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this Consent Agreement and Final Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.
8. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
9. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this Consent Agreement and Final Order.

RESPONDENT:

BY: 
Dennis Harding, Owner/General Manager
Serafini Nissan-Volvo

DATE: 10/11/13

COMPLAINANT:

BY: 
Dore LaPosta, Director
Division of Enforcement and Compliance Assistant
U.S. EPA, Region 2
New York, New York 10007-1866

DATE: DECEMBER 10, 2013

IV. FINAL ORDER

The Regional Administrator of the United States Environmental Protection Agency, Region 2, vested by authority delegated by the Administrator of the United States Environmental Protection Agency and having further re-delegated such authority to the Regional Judicial Officer, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the Parties is hereby approved, incorporated herein, and issued as a Final Order. The Effective Date of this Final Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.

DATE: December 12, 2013

Hel S Ferrara

HELEN S. FERRARA
Regional Judicial Officer
U.S. EPA, Region 2
290 Broadway
New York, NY 10007-1866

EPA REGION 2
AIR COMPLIANCE BR.

2013 OCT 17 PM 3:39

AIR COMPLIANCE BR.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, New York 10007-1866

IN THE MATTER OF:

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Respondent

Proceedings under Section 1423(c)
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42 U.S.C. § 300h-2(c)

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CERTIFICATE OF SERVICE

I certify that on DEC 13 2013, I served the above-cited 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 Hand:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection
Agency - Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Copy by Certified Mail, Return Receipt Requested:

Dennis Harding
Serafini Nissan-Volvo
3101 Vestal Parkway East
Vestal, NY 13350

Dated: DEC 13 2013

Signature:

Name and Title:

Mary C Cosgrove
Mary C Cosgrove

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
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REGIONAL HEARING
CLERK

DEC 13 2013

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5940 0326

Mr. Dennis Harding, Owner/General Manager
Serafini Nissan-Volvo
3101 Vestal Parkway East
Steward Road Building
Vestal, New York 13350

Re: In the Matter of Serafini Nissan-Volvo
Docket No. CWA-02-2013-8901

Dear Mr. Harding:

Enclosed is a fully executed Consent Agreement and Final Order (CAFO) that resolves the above referenced matter. Please note that payment of the civil penalty assessed must be paid in accordance with the terms outlined in Terms of Settlement on page 2 of the CAFO.

Thank you for your cooperation and assistance to bring this matter to a mutually satisfactory resolution.

Sincerely,

Kara E. Murphy, Esq.
Office of Regional Counsel
Water & General Law Branch

Enclosure

cc: Karen Maples, Regional Hearing Clerk