



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JAN 21 2009

CERTIFIED MAIL 7005 3110 0002 5134 4756
RETURN RECEIPT REQUESTED

John M. Lihvarcik
Vice President and Chief Operating Officer
Aqua Utilities Florida, Inc.
P.O. Box 490310
Leesburg, Florida 34749

Re: Consent Agreement and Final Order
Docket No. CWA-04-2008-4525(b)

Dear Mr. Lihvarcik:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order (CA/FO) 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 with respect to payment.

If you have any concerns or questions, please contact Mr. Edward Sims at (404) 562-9768. Legal inquiries should be directed to William T. Jones, Associate Regional Counsel, at (404) 562-9582.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas F. Mundrick".

Douglas F. Mundrick, P.E., Chief
Water Programs Enforcement Branch
Water Management Division

Enclosure

cc: Florida Department of Environmental
Protection

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

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)

Aqua Utilities Florida, Inc.)
Leesburg, Florida)

Respondent.)

)
) **CONSENT AGREEMENT AND**
) **FINAL ORDER**

) **Docket No. CWA-04-2008-4525(b)**
)
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)
)

CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(A) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(A), 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*, including Subpart I, 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)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), 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 Management Division, who in turn has delegated this authority to the Chief of the Water Programs Enforcement Branch of EPA Region 4 ("Complainant").

II. Allegations

3. At all times relevant to this action, Aqua Utilities Florida, Inc. ("Respondent"), was a corporation duly organized and existing under the laws of the State of Florida and, therefore, a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 503.9(o) and (q).

4. At all times relevant to this action, Respondent owned and/or operated the Fruitville Wastewater Treatment Plant (WWTP), a privately owned treatment works, located at 1616 Wendel Kent Road, Sarasota, Florida with a design flow rate equal to or greater than one million gallons per day, and is a "treatment works" as defined in 40 C.F.R. § 503.9(aa).

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5. Respondent is a "person who prepares sewage sludge" as defined in 40 C.F.R. § 503.9(r), as either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge, and is thus subject to the requirements of the CWA and 40 C.F.R. Part 503.

6. Section 405(e) of the CWA, 33 U.S.C. § 1345(e), makes it unlawful for any person to dispose of sludge from a treatment works treating domestic sewage except in accordance with regulations promulgated pursuant to Section 405(d) of the CWA, 33 U.S.C. § 1345(d), which are found at 40 C.F.R. Part 503.

7. 40 C.F.R. Part 503 establishes standards for the use and disposal of sludge, and consists of general requirements, pollutant limits, management practices, operational standards, frequency of monitoring, recordkeeping, and reporting requirements for the final use or disposal of sewage sludge generated during the treatment of domestic sewage in a treatment works.

✓ 8. In response to a request for information, the Respondent submitted the annual sludge reports for calendar years 2002, 2003, 2004, 2005 and 2006 on September 14, 2007. The 2004 annual sludge report indicated that the Respondent land applied approximately 303 dry metric tons of sewage sludge during the 2004 calendar year.

✓ 9. The 2004 annual sludge report contained data supporting the Class B pathogen requirement for 40 C.F.R. Part 503. The Respondent chose 40 C.F.R. § 503.32(b)(2), monitoring of fecal coliform, which requires that seven samples of treated sewage sludge be collected and that the geometric mean fecal coliform density of these samples be less than 2 million Colony Forming Units (CFU) or Most Probable Number (MPN) per gram of total solids (dry weight basis). The resultant geometric mean was 8,917,374 CFU/gram.

10. The 2004 annual sludge report indicated Respondent failed to demonstrate compliance with 40 C.F.R. § 503.32(b)(2), monitoring of fecal coliform and Section 405(e) of the CWA, 33 U.S.C. § 1345(e).

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. Respondent is a "person who prepares sewage sludge" as defined in 40 C.F.R. § 503.9(r) and is subject to the requirements of the CWA and 40 C.F.R. Part 503.

13. Respondent is required to demonstrate compliance with 40 C.F.R. § 503.32 pathogen requirement prior to land application of sewage sludge.

14. Respondent violated Section 405(e) of the CWA, 33 U.S.C. § 1345(e), by failing to demonstrate compliance with 40 C.F.R. § 503.32 pathogen requirement prior to land application of sewage sludge.

15. 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.

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

17. 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.

18. 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.

19. 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.

20. 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

21. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, EPA has determined that Four Thousand Nine Hundred Ninety-Nine Dollars (\$4,999) is an appropriate civil penalty to settle this action.

22. 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, MO 63197-9000

23. 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, GA 30303-8960

and

Ms. Mary Mattox
U.S. Environmental Protection Agency, Region 4
Water Management Division
Water Programs Enforcement Branch
Gulf Enforcement Section
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

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

25. Pursuant to 40 C.F.R. Parts 13 and 31 U.S.C. § 3717 et seq., if EPA does not receive payment of the penalty assessed by this CA/FO in full by its due date, interest shall accrue on the unpaid balance from the due date through the date of payment at an annual rate equal to the rate of the current value of funds to the United States Treasury as prescribed and published by the Secretary of the Treasury. If all or part of the payment is overdue, EPA will assess a late-payment handling charge of \$15.00, with an additional delinquent notice charge of \$15.00 for each subsequent thirty (30) day period. EPA will also assess on a monthly basis an up to six per cent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date.

26. 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), attorneys 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 per cent (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

27. 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.

28. 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 agreement is based, or for Respondent's violation of any federal or state statute, regulation or permit.

29. 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. 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.

30. 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.

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

32. 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.

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

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

For Complainant:

William T. Jones
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960
(404) 562-9582

For Respondent:

Mr. Rory C. Ryan, Esq.
Holland & Knight, LLP
P.O. Box 1526
Orlando, Florida 32802

35. 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.

36. 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 Florida was provided a prior opportunity to consult with Complainant regarding this matter.

VI. Effective Date

37. 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:

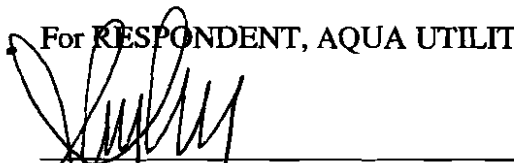
For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:



Douglas F. Mundrick, P.E., Chief
Water Programs Enforcement Branch
Water Management Division
U.S. EPA Region 4

Date: 12/8/08

For RESPONDENT, AQUA UTILITIES FLORIDA, INC.:



John M. Lihvarcik
Chief Operating Officer
Aqua Utilities Florida, Inc.

Date: Dec 1, 2008

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

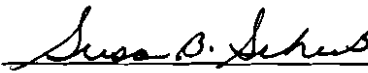
IN THE MATTER OF:)
)
Aqua Utilities Florida, Inc.) CONSENT AGREEMENT AND
Leesburg, Florida) FINAL ORDER
)
Respondent.) Docket No. CWA-04-2008-4525(b)
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_____)

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*, including Subpart I, 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)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 1/21/09



Susan B. Schub
Regional Judicial Officer

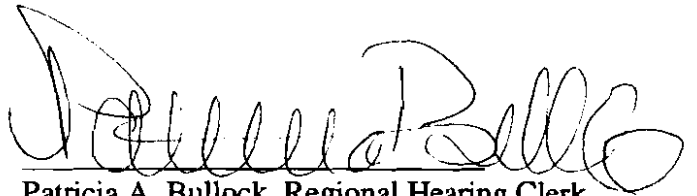
CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of Aqua Utilities Florida, Inc. Docket No. CWA-04-2008-4525(b) (filed with the Regional Hearing Clerk on 1-21-09, 2008) ²⁰⁰⁹ was served on 1-21-09, ²⁰⁰⁹ 2008, in the manner specified to each of the persons listed below.

By hand-delivery: William T. Jones
Assistant Regional Counsel
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303

**By certified mail,
return receipt requested:** Mr. Rory C. Ryan, Esq.
Holland & Knight LLP
P.O. Box 1526
Orlando, FL 32802

Ms. Janet Llewellyn
Director, Division of Water Resource
Management
Florida Department of Environmental Protection
2600 Blair Stone Road
Tallahassee, FL 32399-2400



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 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 12/11/08
(Name) (Date)

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

- | | |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree
USAO COLLECTS | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree
DOJ COLLECTS | <input type="checkbox"/> Oversight Billing - Cost Package required:
Sent with bill |
| <input type="checkbox"/> Other Receivable | <input type="checkbox"/> Not sent with bill |
| <input type="checkbox"/> This is an original debt | <input type="checkbox"/> Oversight Billing - Cost Package not required |
| | <input type="checkbox"/> This is a modification |

PAYEE: Agua Utilities Florida, Inc - Leesburg, FL
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 4,999
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CWA- 04-2008-4525(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
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
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) |