



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 30 2015

CERTIFIED MAIL 7014 2870 0000 3318 3791
RETURN RECEIPT REQUESTED

Mr. James Bennett
Manager, Town of Red Springs
217 South Main Street
P.O. Box 790
Red Springs, North Carolina 28377

Re: Consent Agreement and Final Order
Docket No.: CWA-04-2015-4514(b)
National Pollutant Discharge Elimination System Permit No.: NC0025577
Red Springs, North Carolina

Dear Mr. Bennett:

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 Judicial Officer. Please make note of the provisions under Paragraph IV. Payment.

Should you have any questions or concerns regarding this matter, please contact Ms. Alenda Johnson at (404) 562-9761 or via email at johnson.alenda@epa.gov. Legal inquiries should be directed to Ms. Michele Wetherington, Assistant Regional Counsel, at (404) 562-9613 or via email at wetherington.michele@epa.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Denisse D. Diaz".

Denisse D. Diaz, Chief
Clean Water Enforcement Branch
Water Protection Division

Enclosure

cc: Mr. Jeff Poupart
North Carolina Department of Environmental Quality

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)
) **CONSENT AGREEMENT AND**
) **FINAL ORDER**
TOWN OF RED SPRINGS, NORTH CAROLINA)
WASTEWATER TREATMENT PLANT)
)
)
RESPONDENT.) **DOCKET NO. CWA-04-2015-4514(b)**
_____)

RECEIVED
APR 15 2015
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) 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 for Region 4, who in turn has delegated this authority to the Director of the Water Protection Division, who in turn has delegated this authority to the Chief of the National Pollutant Discharge Elimination System (NPDES) Permitting and Enforcement Branch of EPA, Region 4 (“Complainant”).

II. Allegations

3. The Town of Red Springs (“Town”) is a municipality existing under the laws of the State of North Carolina and is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5). The Public Works Department of the Town is responsible for wastewater treatment.

4. At all times relevant to this action, the Town owned and/or operated a Publicly Owned Treatment Works (“POTW”) including the Town of Red Springs Wastewater Treatment Plant (“WWTP”), located in Robeson County at NC Highway 71, Red Springs, North Carolina. This WWTP discharges “pollutants” from a point source into Little Raft Swamp, a navigable water, as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

5. To accomplish the objectives of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), 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 National Pollutant Discharge Elimination System ("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 the 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. The EPA has granted the State of North Carolina through the North Carolina Department of Environment and Natural Resources (NCDENR) approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. Pursuant to Section 307 of the CWA, 33 U.S.C. § 1317, the EPA has established standards that govern discharges into POTWs that discharge to navigable waters. The General Pretreatment Regulations, found at 40 C.F.R. Part 403, are designed to ensure that each POTW can comply with its NPDES permit.

8. Pursuant to 40 C.F.R. § 403.5(c)(2), certain POTWs, where pollutants contributed by Users result in Interference or Pass Through, and such violation is likely to recur, are required to develop and enforce specific effluent limits for Industrial Users which are necessary to ensure compliance with the POTW's NPDES permit.

9. Pursuant to 40 C.F.R. § 403.3(p), Pass Through means a discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit.

10. The Town's WWTP is operating under NPDES Permit No. NC0025577 ("Permit"), effective on June 1, 2015, and expiring on July 31, 2019.

11. On May 10, 2013, the EPA sent a Notice of Violation (NOV) letter to the Town regarding Permit effluent limit violations self-reported to the Integrated Compliance and Information System. The NOV required the Town to provide a written explanation of the cause of the Town's pH, copper, mercury and cyanide violations and a summary of the corrective actions planned or taken to address the effluent limit exceedances.

12. On June 27, 2013, the Town provided a response to the NOV. The response addressed the violations in the NOV and stated that the Town required the dental offices to install mercury traps as a result of the NCDENR Order issued in 2003. Additionally, the Town has slip lined targeted areas of the system closest to the dental offices to address historical mercury build up. The lateral from Dr. Cheryl Locklear's dental office was replaced in October 2008. At the time of the NOV response, Dr. Douglas Jackson's lateral line had not been replaced.

13. On February 25, 2014, the EPA sent the Town an Opportunity to Show Cause letter notifying the Town of additional violations associated with effluent limit exceedances and requesting that the Town participate in a Show Cause meeting with the EPA to discuss the violations. The EPA and the Town held a Show Cause meeting on March 6, 2014. During the Show Cause, the Town discussed its progress with investigating the source of the mercury noncompliance and its upcoming sampling of the dental office laterals.

14. On March 13, 2014, the Town sampled the laterals at Dr. Locklear's dental office and Dr. Jackson's dental office, as well as the WWTP influent and effluent. The results showed 378,000 ng/L, 9,740 ng/L, 495 ng/L and 11.6 ng/L, respectively.

15. The Town sent a letter on September 25, 2014, notifying Dr. Cheryl Locklear that a buildup of mercury was determined to be coming from the lateral line based upon a camera viewing of the line. The dental office was provided a timeframe of approximately 30 days to replace the line or follow up with the Town for additional time.

16. The Town conducted subsequent sampling of the wastewater discharging from Dr. Locklear's dental office in October 2014 and Dr. Jackson's dental office in January 2015. These samples identified mercury levels at a magnitude of 400 times or greater than the Town's final Permit effluent limit. The contaminants which were discharged in excess of the permit limit have been identified as contributors of the Town's Permit limit exceedances.

17. During the months of March through June 2014, the Town reported violations of its mercury daily maximum limits. Additionally, the Town's November 2014, effluent discharge sample was 70% higher than the Permit limit, and was taken three days after the lateral sample at Dr. Jackson's office taken in October 2014. These findings of mercury Permit limit exceedances with the high mercury levels sampled at the above identified locations in the collection system meet the requirements of Pass Through as defined in 40 CFR Part 403.3(p).

18. The Town exceeded its Permit effluent limits for mercury, copper, cyanide, and zinc in 33 months from May 2012 through March 2015.

19. The Town has violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), in that the Town has discharged pollutants to navigable waters not in compliance with its NPDES Permit and has violated 40 CFR Part 403.5 by failing to establish local limits and enforce when Pass Through or Interference to the POTW was identified.

20. Based on the above, the EPA finds that the Town is in violation of Sections 301(a) and 307 of the CWA, 33 U.S.C. §§ 1311(a) and 1317, and its NPDES Permit.

III. Stipulations and Findings

21. Complainant and the Town 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.

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

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

24. The Town 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.

25. By signing this CA/FO, the Town 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. The Town 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.

26. 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.

27. Complainant and the Town 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

28. 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 fifty thousand dollars (\$50,000.00) is an appropriate civil penalty to settle this action.

29. The Town shall submit payment of the penalty specified in the preceding paragraph **in accordance with the schedule described in Paragraph 31 below** via a cashier’s or certified check, payable to the order of “Treasurer, United States of America”. The checks shall reference on their 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

30. At the time of payment, the Town 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

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

31. Town shall pay a civil penalty in the amount of \$50,000 as follows:
- a. Within thirty (30) days of the effective date of this CA/FO, Town shall pay \$12,500;
 - b. Within six (6) months of the effective date of this CA/FO, Town shall pay \$12,500;
 - c. Within twelve (12) months of the effective date of this CA/FO, Town shall pay \$12,500;
 - d. Within eighteen months (18) of the effective date of this CA/FO, Town shall pay \$12,500.

32. The penalty amount specified above shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of federal taxes.

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

34. This CA/FO shall not relieve the Town 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 by the United States pursuant to federal laws and regulations administered by the EPA.

35. Except as otherwise set forth herein, 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 the Town's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for the Town's violation of any federal or state statute, regulation or permit.

36. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and the Town 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 Town, 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 the Town 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.

37. 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.

38. This CA/FO applies to and is binding upon the Town and its officers, directors, employees, agents, successors and assigns.

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

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

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

For Complainant:

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

For the Town:

Mr. James Bennett
Manager, Town of Red Springs
217 South Main Street
P.O. Box 790
Red Springs, North Carolina 28377

42. 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.

43. 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.

44. Effective upon signature of this CA/FO by the Town, Town agrees that the time period commencing on the date of its signature and ending on the date the EPA receives from Town the payment required by this CA/FO shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the EPA related to the matters addressed in this CA/FO and that, in any action brought by the EPA related to the matters addressed, Town will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If the EPA gives notice to Town that it will not make this CA/FO effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by the EPA.

VI. Effective Date

45. 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:

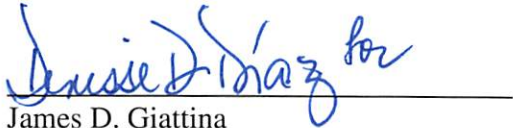
For RESPONDENT, TOWN OF RED SPRINGS, NORTH CAROLINA:



James Bennett
Manager
Town of Red Springs, North Carolina

Date: 8/20/15

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:



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

Date: 9/30/15

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4


IN THE MATTER OF:)
) CONSENT AGREEMENT AND
) FINAL ORDER
)
TOWN OF RED SPRINGS, NORTH CAROLINA)
WASTEWATER TREATMENT PLANT)
)
RESPONDENT.) DOCKET NO. CWA-04-2015-4514(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 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: 9/30/15



Heather McTeer Toney
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 **Town of Red Springs Docket No. CWA-04-2015-4514(b)** (filed with the Regional Hearing Clerk on 9-30, 2015), was served on 9-30, 2015, in the manner specified to each of the persons listed below.

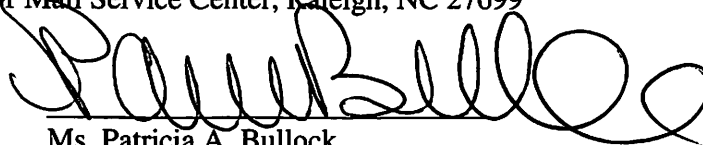
By hand-delivery:

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

By certified mail,
return receipt requested:

Mr. James Bennett
Manager, Town of Red Springs
217 South Main Street
P.O. Box 790
Red Springs, North Carolina 28377
(910) 843-5421

Mr. Jay Zimmerman, Director
Division of Water Resources
North Carolina Department of Environment and Natural Resources
1601 Mail Service Center, Raleigh, NC 27699



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