



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

CERTIFIED MAIL 7015 1730 0002 0524 5161
RETURN RECEIPT REQUESTED

DEC 29 2015

Mr. Frank Bottorff
City Manager, City of Havelock
Post Office Drawer 368
Havelock, North Carolina 28532

c/o Ms. Amy P. Wang
Attorney
Ward and Smith, P.A.
Post Office Box 867
New Bern, North Carolina 28563-0867

Re: Consent Agreement and Final Order No. CWA-04-2016-4500(b)
City of Havelock, North Carolina

Dear Mr. Bottorff:

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 Paragraph IV Payment.

Should you have any questions or concerns, please contact Mr. Wayne Lee, Attorney Adviser, at (404) 562-9523 or via email at lee.wayne@epa.gov.

Sincerely,

A handwritten signature in blue ink that reads "Denisse D. Diaz".

Denisse D. Diaz, Chief
NPDES Permitting and Enforcement Branch
Water Protection Division

Enclosure

cc: Mr. Jonathan Risgaard, NCDENR

Ms. Diane Huffman, USEPA Region 7

Ms. Patricia G. Miller, USEPA Region 7

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)	
)	CONSENT AGREEMENT AND
CITY OF HAVELOCK, NORTH CAROLINA)	FINAL ORDER
)	
RESPONDENT.)	DOCKET NO. CWA-04-2016-450065

RECEIVED
EPA REGION IV
2015 DEC 29 AM 8:56
HEARING CLERK

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. 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 of the EPA, Region 4, who in turn has delegated this authority to the Chief of the NPDES Permitting and Enforcement Branch of the EPA, Region 4 ("Complainant").

II. Allegations

3. At all times relevant to this action, the City of Havelock, North Carolina ("Respondent"), was a municipality 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), and 40 C.F.R. §§ 503.9(o) and (q).

4. At all times relevant to this action, Respondent owned and operated a Publicly Owned Treatment Works ("POTW"), located at 304 North Jackson Drive, Havelock, North Carolina, 28532, which has a design flow rate equal to or greater than one million gallons per day, serves 10,000 people or more or is a "Class I sludge management facility" as defined in 40 C.F.R. § 503.9(c).

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 sewage 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, for the final use or disposal of sewage sludge generated during the treatment of domestic sewage in a treatment works.

8. 40 C.F.R. § 503.18(a) requires Class I sludge management facilities, POTWs with a design flow rate equal to or greater than one million gallons per day and POTWs that serve 10,000 people or more to submit certain information to the permitting authority (EPA) on February 19th of each year. This information is hereinafter referred as the “annual sludge report.”

9. Respondent submitted the annual sludge report for calendar year 2014 on February 10, 2015.

10. In the annual sludge report, Respondent reported 137.23 dry metric tons (dmt) of sewage sludge were land applied to agricultural land on fields identified as Field Number SF PA2-1A, SF PA2-1B, SF PA2-1C, SF PA2-1D, SF PA2-1E, SF PA2-1F, and SF PA-1G in calendar year 2014.

11. 40 C.F.R. § 503.15(c)(1) requires that “[o]ne of the vector attraction reduction (VAR) requirements in § 503.33 (b)(1) through (b)(10) shall be met when bulk sewage sludge is applied to agricultural land, forest, a public contact site, or a reclamation site.”

12. 40 C.F.R. § 503.11(e) defines bulk sewage sludge as “...sewage sludge that is not sold or given away in a bag or other container for application to the land.”

13. In February 2014, the Respondent land applied 63.55 dmt of sewage sludge to agricultural land in which Respondent failed to comply with 40 C.F.R. § 503.15(c)(1) by not meeting one of the VAR requirements in 40 C.F.R. § 503.33 (b)(1) through (b)(10). Therefore, Respondent violated Section 405(e) of the CWA, 33 U.S.C. § 1345(e).

III. Stipulations and Findings

14. 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.

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

16. The 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. The 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, the 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. The 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. 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 the Respondent was materially false or inaccurate at the time such information or certification was provided to the EPA.

20. Complainant and the 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, the EPA has determined that **eleven thousand five hundred dollars (\$11,500)** is an appropriate civil penalty to settle this action.

22. The 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

23. At the time of payment, the 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

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

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

25. 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 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

26. This CA/FO shall not relieve the 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.

27. 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 Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for the Respondent's violation of any federal or state statute, regulation or permit.

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

29. 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.

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

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

32. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CA/FO.

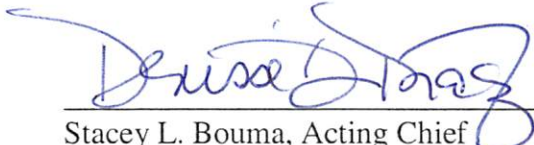
33. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a Consent Agreement and proposed Final Order based on comments received during the public comment period.

34. 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

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

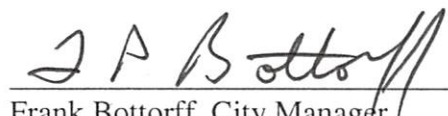
**AGREED AND CONSENTED TO
For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4:**



Stacey L. Bouma, Acting Chief
NPDES Permitting and Enforcement Branch
Water Protection Division
U.S. EPA, Region 4

Date: 12/15/15

For the RESPONDENT, CITY OF HAVELOCK, NORTH CAROLINA:



Frank Bottorff, City Manager
City of Havelock, North Carolina

Date: 23 Oct 2015

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
CITY OF HAVELOCK) CONSENT AGREEMENT AND
NORTH CAROLINA) FINAL ORDER
)
RESPONDENT.) DOCKET NO. CWA-04-2016-4500(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*, 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), the Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: December 22, 2015



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 City of Havelock, North Carolina, Docket No. CWA-04-2016-4500(b) (filed with the Regional Hearing Clerk on this 29 day of December, 2015) was served on this 29 day of December, 2015, in the manner specified to each of the persons listed below.

By hand-delivery:

Mr. Wayne Lee
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

By certified mail,
return receipt requested:

Mr. Frank Bottorff
City Manager
c/o Ms. Amy P. Wang
Attorney
Ward and Smith, P.A.
Post Office Box 867
New Bern, North Carolina 28563-0867

Mr. Jon Risgaard
Environmental Supervisor IV
Wastewater Branch
North Carolina Department of Environment and Natural Resources
Division of Water Resources
1617 Mail Service Center
Raleigh, NC 27699-1617



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