



ENVIRONMENTAL PROTECTION AGENCY

[FRL 12663-01-OMS]

Order Denying Petition to Set Aside Consent Agreement and Proposed Final Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of order denying petition to set aside consent agreement and proposed final order.

SUMMARY: Pursuant to the Clean Water Act, the U.S. Environmental Protection Agency (EPA) hereby provides notice to the public of the denial of the Petition to Set Aside Consent Agreement and Proposed Final Order filed in the matter styled as *In the Matter of Frederick-Winchester Service Authority, and Frederick County Sanitation Authority, d/b/a Frederick Water*, Docket No. CWA-03-2024-0036, along with the reasons for such denial.

ADDRESSES: To access and review documents filed in the matter that is the subject of this notice, please visit

http://yosemite.epa.gov/oarm/alj/alj_web_docket.nsf/Dockets/CWA-03-2024-0036.

FOR FURTHER INFORMATION CONTACT: Matthew Hall, Attorney-Advisor, Office of Administrative Law Judges (1900R), Environmental Protection Agency, 1200 Pennsylvania Avenue N.W., Washington, DC 20004; telephone number: (202) 564-6255 (main) or (202) 564-2199 (direct); fax number: (202) 565-0044; email address: oaljfilng@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Legal Authority

Section 309(g)(1)(A) of the Clean Water Act (CWA or Act) empowers the EPA to assess an administrative civil penalty whenever, on the basis of any information available, the

EPA finds that a person has violated certain sections of the Act or any permit condition or limitation implementing any such section in a permit issued under section 402 or 404 of the Act. 33 U.S.C. 1319(g)(1)(A). However, before issuing an order assessing an administrative civil penalty under section 309(g), the EPA is required by the CWA and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Rules of Practice) to provide public notice of and reasonable opportunity to comment on the proposed issuance of such order. 33 U.S.C. 1319(g)(4); 40 CFR 22.45(b)(1).

Any person who comments on the proposed assessment of a penalty is then entitled to receive notice of any hearing held under section 309(g) of the CWA and at such hearing is entitled to a reasonable opportunity to be heard and to present evidence. 33 U.S.C. 1319(g)(4)(B); 40 CFR 22.45(c)(1). If no hearing is held before issuance of an order assessing a penalty under section 309(g) of the CWA, such as where the administrative penalty action in question is settled pursuant to a consent agreement and final order, any person who commented on the proposed assessment may petition to set aside the order on the basis that material evidence was not considered and to hold a hearing on the penalty. 33 U.S.C. 1319(g)(4)(C); 40 CFR 22.45(c)(4)(ii).

The CWA requires that if the evidence presented in support of the petition is material and was not considered in the issuance of the order, the Administrator shall immediately set aside such order and provide a hearing in accordance with section 309(g). 33 U.S.C. 1319(g)(4)(C). Conversely, if the Administrator denies a hearing, the Administrator shall provide to the petitioner, and publish in the *Federal Register*, notice of and reasons for such denial. *Id.*

The authority to decide petitions by commenters to set aside final orders entered without a hearing and provide copies and/or notice of the decision has been delegated to Regional Administrators in administrative penalty actions brought by regional offices of

the EPA. Memorandum from the EPA Administrator to Regional Administrators Regarding Delegation of Authority 2-52A (January 18, 2017) (available at: <https://intranet.epa.gov/ohr/rmpolicy/ads/dm/2-52A.pdf>). The Rules of Practice require that where a commenter petitions to set aside a consent agreement and final order in an administrative penalty action brought by a regional office of the EPA, the Regional Administrator shall assign a Petition Officer to consider and rule on the petition. 40 CFR 22.45(c)(4)(iii). Upon review of the petition and any response filed by the complainant, the Petition Officer shall then make written findings as to: (A) the extent to which the petition states an issue relevant and material to the issuance of the consent agreement and proposed final order; (B) whether the complainant adequately considered and responded to the petition; and (C) whether the resolution of the proceeding by the parties is appropriate without a hearing. 40 CFR 22.45(c)(4)(v).

If the Petition Officer finds that a hearing is appropriate, the Presiding Officer shall order that the consent agreement and proposed final order be set aside and establish a schedule for a hearing. 40 CFR 22.45(c)(4)(vi). Conversely, if the Petition Officer finds that resolution of the proceeding without a hearing is appropriate, the Petition Officer shall issue an order denying the petition and stating reasons for the denial. 40 CFR 22.45(c)(4)(vii). The Petition Officer shall then file the order with the Regional Hearing Clerk, serve copies of the order on the parties and the commenter, and provide public notice of the order. *Id.*

II. Procedural Background

In March 2024, the Director of the Enforcement and Compliance Assurance Division of EPA Region 3 (Complainant) and the Frederick-Winchester Service Authority and the Frederick County Sanitation Authority (Respondents) agreed to enter into a Consent Agreement and Final Order (Proposed CAFO) in the matter styled as *In the Matter of Frederick-Winchester Service Authority and Frederick County Sanitation Authority*,

Docket No. CWA-03-2024-0036. The Proposed CAFO sought to simultaneously commence and conclude an administrative penalty action under section 309(g) of the CWA against the Respondents for alleged violations of effluent limitations found in a permit issued to the Respondents under section 402 of the CWA that occurred between June 30, 2019, and January 31, 2024, at the Respondents' Crooked Run Wastewater Treatment Plant. Pursuant to the agreement, the Respondents agreed to pay a civil penalty of \$12,000 to settle the alleged violations and waived their right to otherwise contest the allegations or appeal the Final Order. Pursuant to section 309(a)(3) of the CWA, the parties separately entered into an Administrative Order of Consent, which required the Respondents to provide the EPA with an Injunctive Relief Framework detailing plans to implement infrastructure upgrades needed to come into compliance with their permit's effluent limitations.

The Complainant posted a public notice expressing an intent to file the Proposed CAFO and advising that anyone wishing to comment on the Proposed CAFO could do so. Alan Randolph Holland, Jr. (Petitioner) was among a number of people that filed a timely comment on the Proposed CAFO. The Complainant then sent a letter to each commenter declaring an intent to finalize the Proposed CAFO as originally planned, attaching a copy of the Proposed CAFO and advising commenters that they had 30 days from its receipt to petition the Regional Administrator to set aside the Proposed CAFO. On July 16, 2024, the Petitioner timely submitted a petition seeking to set aside the Proposed CAFO and have a public hearing held thereon (Petition).

On September 17, 2024, having decided not to withdraw the Proposed CAFO after considering the arguments in the Petition, the Regional Administrator for Region 3 requested that the Office of Administrative Law Judges assign an Administrative Law Judge to consider the Petition in accordance with 40 CFR 22.45(c)(4)(iii). On October 25, 2024, an order issued in which the undersigned was assigned to consider and rule on

the Petition, and the Complainant was directed to present a written response to the Petition. The Complainant timely filed a response, along with exhibits in support, on November 25, 2024.

III. Denial of Petition

On February 14, 2025, the undersigned issued an Order Denying Petition to Set Aside Consent Agreement and Proposed Final Order (Order), holding that resolution of the proceeding without a hearing is appropriate. The Order concluded that none of the three issues raised in the Petition presented relevant and material evidence that had not been adequately considered and responded to by the Complainant.

First, the Petitioner argued that the civil penalty was incorrectly calculated based on the Respondents' false statement that they received no economic benefit. According to the Petitioner, the Respondents' assertion to the Complainant that revenue generated by the community served by the Crooked Run Wastewater Treatment Plant covered the cost of operating the facility was contradicted by previous statements that operating costs outstripped revenue. The undersigned, however, found that the purportedly false statement was not material because it would not change the economic benefit analysis. Second, the Petitioner argued that the Respondents falsely claimed to have acted in good faith by telling the Complainant that their policies included stringent pollution control requirements at the time of the violations when, according to the Petitioner, the Respondents adopted the measures only after the violations were discovered. The undersigned concluded that the Respondents' alleged statement was not materially false because the evidence provided by the Petitioner directly supported the Respondents' claim.

Third, the Petitioner argued that, based on the two allegedly false statements that he identified, the Respondents falsely certified to the Complainant that all of their statements were complete and accurate. The undersigned concluded that this argument was merely a

repackaging of the Petitioner's first two arguments and that any allegedly false certification will not itself be material and relevant if the allegedly false statements underlying the certification were not themselves material and relevant.

Because the Petitioner did not identify any material and relevant issues not considered by the Complainant when setting the civil penalty, the undersigned therefore issued the Order denying the Petition. The Order may be viewed online at http://yosemite.epa.gov/oarm/alj/alj_web_docket.nsf/Dockets/CWA-03-2024-0036.

Authority: 33 U.S.C. 1319(g); 40 CFR part 22.

Dated: February 28, 2025.

Susan L. Biro,
Chief Administrative Law Judge,
Office of Administrative Law Judges.

[FR Doc. 2025-04040 Filed: 3/12/2025 8:45 am; Publication Date: 3/13/2025]