

**PUBLIC NOTICE**  
**U. S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4**  
**WATER PROTECTION DIVISION**  
**NPDES PERMITTING AND ENFORCEMENT BRANCH**  
**ATLANTA FEDERAL CENTER**  
**61 FORSYTH STREET, S.W.**  
**ATLANTA, GEORGIA 30303**

**DATE: August 25, 2016**

**PUBLIC NOTICE No. CWA-04-2016-4525(b)**

**Notice of Proposed Issuance of  
Consent Agreement and Final Order**

The U.S. Environmental Protection Agency (EPA), Region 4, proposes to issue a Consent Agreement and Final Order (CAFO), Docket No. CWA-04-2016-4525(b), that assesses an administrative penalty of \$25,000.00 to Triest Ag Group, Inc. (Respondent), 900 West Golden Road, Tifton, Tift County, Georgia 31793, under the authority of Section 309(g)(2)(A) of the Clean Water Act (CWA) 33 U.S.C. § 1319(g)(2)(A).

The CAFO will settle the EPA allegations that the Respondent violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), by failing to fully comply with its National Pollutant Discharge Elimination System permit, the State of Georgia's *Storm Water Discharges Associated with Industrial Activity, Permit No. GAR050000*, at its agricultural chemical facility known as Triest Ag Group, Inc. located at 900 West Golden Road, Tifton, Tift County, Georgia.

Any person wishing to comment on any aspect of the proposed CAFO may submit such comments in writing to the Regional Hearing Clerk at U.S. EPA, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia, 30303. Comments must be submitted within 30 days of the date of this notice. Please include the Public Notice Number and the Docket Number with any submitted comments.

Because this matter involves a CWA Section 309(g) proceeding that is proposed to be simultaneously commenced and settled under 40 C.F.R. § 22.13(b), the EPA cannot resolve or settle this CAFO until ten days after the close of the public comment period in accordance with 40 C.F.R. § 22.45 (b) and (c).

**FOR FURTHER INFORMATION:** Persons wishing to receive a copy of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22, which apply to this matter, or comment upon the proposed penalty assessment, should contact the Regional Hearing Clerk identified above. Unless otherwise noted, the public record for this action is located in the EPA Regional Office at 61 Forsyth Street, S.W., Atlanta, Georgia, and the file will be open for public inspection between 9:00 a.m. and 4:00 p.m., Monday through Friday.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

<b>IN THE MATTER OF:</b>	)	
	)	<b>CONSENT AGREEMENT AND</b>
<b>TRiest AG GROUP, INC.</b>	)	<b>FINAL ORDER</b>
<b>900 WEST GOLDEN ROAD</b>	)	
<b>TIFTON, TIFT COUNTY, GEORGIA</b>	)	
	)	
<b>RESPONDENT</b>	)	<b>DOCKET NO. CWA-04-2016-4525(b)</b>
_____	)	

**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. 40,176 (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 Clean Water Enforcement Branch of the EPA, Region 4 (“Complainant”).

**II. Allegations**

3. TriEst Ag Group, Inc. (“Respondent”) is a corporation that is organized under the laws of the State of Delaware and is registered to do business in the State of Georgia and is therefore a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At all times relevant to this action, the Respondent owned and/or operated an agricultural chemical facility (“Facility”), as identified by Standard Industrial Classification (“SIC”) Code 2879, located at 900 West Golden Road, in Tifton, Tift County, Georgia 31793.

5. To accomplish the objective 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, including stormwater, into navigable waters subject to specific terms and conditions. The EPA has granted the State of Georgia, through the Georgia Environmental Protection Division (“GAEPD”), approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. GAEPD issued the Authorization to Discharge Under The National Pollutant Discharge Elimination System Stormwater Discharges Associated With Industrial Activity, Permit No. GAR050000 (“Permit”) in accordance with the Georgia Water Quality Control Act (O.C.G.A. Code Sections 12-5-20 et seq., 1964), the Georgia Rules and Regulations for Water Quality Control, Chapter 391-3-6, and the CWA. The Permit was effective June 1, 2012, and shall expire on May 31, 2017. Coverage under the Permit is obtained by submittal of a Notice of Intent (“NOI”) to GAEPD.

8. On September 24, 2013, Respondent submitted an NOI to GAEPD requesting coverage under the Permit at the Facility. The Respondent has a copy of the September 24, 2013 NOI; however, GAEPD has no record of receipt of this NOI and Respondent was not able to produce a return receipt confirming that the NOI was properly submitted to GAEPD. Assuming proper submittal to GAEPD on September 24, 2013, Respondent’s coverage under the Permit became effective on September 24, 2013, and will expire on May 31, 2017, and requires Respondent to comply with all provisions of the Permit.

9. Part 4.1 and Part 5.4.5 of the Permit requires the Respondent to keep records of routine quarterly inspections.

10. Part 4.2.1.2 of the Permit requires that the quarterly visual inspection sample be collected within the first 30 minutes of actual discharge and have a wait period of at least 72 hours from the previous discharge.

11. Part 4.3 and Part 5.4.5 of the Permit requires the Respondent to keep records of comprehensive annual inspections.

12. Part 5.1.3.4 of the Permit requires the Respondent to document on the annual report that they have evaluated for the presence of non-storm water discharges and that all unauthorized discharges have been eliminated.

13. Part 5.1.4 of the Permit specifies that the SWPPP must include a description of the control measures.

14. Part 5.1.6 and Appendix B.7 of the Permit require that the Storm Water Pollution Prevention Plan (SWPPP) must be signed, dated, and contain a certification statement.

15. Part 5.4.1 of the Permit specifies that the SWPPP must contain a copy of the NOI submitted to Georgia Environmental Protection Division (EPD) along with any correspondence exchanged between the permittee and EPD specific to coverage under this permit.

16. Part 5.4.4 of the Permit requires the Respondent to document all maintenance and repairs of control measures.

17. Part 6.1.3 and Part 6.1.4 of the Permit requires that the benchmark sample be collected within the first 30 minutes of actual discharge and have a waiting period of at least 72 hours from the previous rain event.

18. For stormwater samples exceeding a benchmark value, Part 6.2.1.2 of the Permit requires that the Respondent must determine if modifications are necessary to meet the benchmark value.

19. Part 7.1 of the Permit requires the permittee to submit an annual report of benchmark monitoring data to EPD.

20. Part 8. Subsector C1 of the permit requires the Respondent to monitor sector-specific benchmark parameters for each outfall.

21. Appendix B.13 of the Permit specifies that the Respondent must properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used to achieve compliance with the conditions of the Permit and the SWPPP.

22. On October 28, 2015, the EPA and GAEPD performed a Compliance Stormwater Evaluation Inspection ("CSWEI") at the Facility to evaluate the treatment and disposal of stormwater at the Facility and to evaluate Respondent's compliance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.26, and the Permit.

23. As a result of the CSWEI, the EPA has determined that stormwater associated with industrial activity was discharged from the Facility within the meaning of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations into Mill Creek, a navigable water within the meaning of Section 502((7) of the CWA, 33 U.S.C. § 1362(7).

24. Based on the CSWEI and review of additional information, the EPA has determined that the Respondent has failed to comply with the CWA, its implementing regulations, and the Permit as follows:

25. The Respondent had no routine quarterly inspection records, as required by Part 4.1 and Part 5.4.5 of the Permit.

26. The Respondent had no documentation in the Stormwater Discharge Inspection/Monitoring/Sampling Form that visual inspections of the discharge were taken within

the first 30 minutes of discharge and after a waiting period of at least 72 hours from the last discharge as required by Part 4.2.1.2 of the Permit.

27. The Respondent had no annual comprehensive inspection records as required by Part 4.3 and Part 5.4.5 of the Permit.

28. The Respondent had no annual non-stormwater discharge certification records as required by Part 5.1.3.4 of the Permit.

29. The SWPPP does contain the design layout and does not describe the operation and maintenance requirements relating to the stormwater retention system as required by Part 5.1.4 of the Permit.

30. The SWPPP revised on September 21, 2014, was not signed or dated, and did not contain a certification statement as required by Part 5.1.6 and Appendix B.7 of the Permit.

31. The Respondent produced an NOI dated 9/24/13. However, EPD has no record in their file for this NOI. The NOI is required to be sent via certified mail with a return receipt. The return receipt serves as confirmation of the NOI submittal; however, the Respondent was not able to produce a return receipt for the 9/24/13 NOI specific to coverage under the Permit issued on June 1, 2012, as required by Part 5.4.1 of the Permit.

32. The Respondent had no documentation of maintenance and repairs of control measures, including the date of regular maintenance, date of discovery of areas in need of repair/replacement, and repair dates for control measures returned to full function as required by Part 5.4.4 of the Permit.

33. The Respondent had no documentation that benchmark samples were taken within the first 30 minutes of discharge and after a waiting period of least 72 hours from the previous rain event, as required by Part 6.1.3 and Part 6.1.4 of the Permit.

34. A sampling result on 12/29/14, reported a value of 200 mg/l for TSS which exceeded the benchmark value of 100 mg/l in the Permit. Part 6.2.1.2 (b) of the Permit requires that when sampling data exceeds benchmarks, the Respondent must determine if a modification to the current control measures, housekeeping, erosion & sedimentation controls, etc. is necessary to meet the TSS benchmark. Also, the Permit specified that the Respondent must increase the sampling frequency from once/year to quarterly until the TSS benchmark is met. Respondent had no documentation that any such determination was made or that corresponding actions and increased sampling were conducted as required by Part 6.2.1.2 (b) of the Permit.

35. The Respondent had no records documenting that annual benchmark monitoring data was submitted to EPD as required by Part 7.1 of the Permit. These monitoring data must be sent to EPD by January 31 of each year.

36. The Analytical Data Sheet from the Respondent's contract laboratory for sample collection date of 12/29/14 (Sample ID: 176236) indicated the required benchmark parameter for Oil & Grease was not analyzed as required by Part 8. Subsector C1 of the permit.

37. The Respondent failed to properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used to achieve compliance with the conditions of the Permit and the SWPPP as required by Appendix B.13 of the Permit. The following operation & maintenance and good housekeeping deficiencies were noted during the CSWEI:

- a. *The dumpster was uncovered and the drain valve was not plugged to prevent leaks.*
- b. *The Facility was approximately 80% bare dirt, and it had no sediment & erosion control to prevent or remove sediment in stormwater runoff. The lack of erosion and sediment controls may contribute to the high TSS benchmark in the stormwater sample.*
- c. *According to the SWPPP (page 5), liquid adhesive is contained in 30-gallon steel drums and stored on a concrete pad covered by a sheet metal roof. However, this practice was not being followed as evidenced by a spill of red adhesive on bare ground outdoors near the flammable storage area.*
- d. *Pressure washing of cylinders had caused paint chips to collect on the ground. Blue color paint chips were tracked across the ground and into a concrete trench. At the end of the trench, paint chips were still observed near the fence line.*

38. Therefore, the Respondent has violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), due to its failure to comply with the Permit and also for the discharge not authorized by the Permit.

### **III. Stipulations and Findings**

39. Complainant and the 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.

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

41. 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.

42. 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.

43. 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.

44. 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.

45. 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**

46. 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 twenty five thousand dollars (\$25,000) is an appropriate civil penalty to settle this action.

47. 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 the 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

48. 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

Ms. 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

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

50. 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), 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**

51. 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.

52. Issuance of this CA/FO shall not be deemed as prohibiting, altering, or in any way limiting the ability of the EPA to pursue any other enforcement actions available to it under law. Such actions may include, without limitation, any administrative, civil, or criminal action to seek penalties, fines, injunctive, or other appropriate relief, or to initiate an action for imminent and substantial endangerment, under the CWA or any other federal or state statute, regulation, or permit.

53. 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.

54. 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.

55. 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.

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

57. 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.

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

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

For Complainant:

Paul Schwartz  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9576

For Respondent:

David Rose  
Vice President of Operations  
TriEst Ag Group Inc.  
1101 Industrial Blvd.  
Greenville, North Carolina 27835  
(844) 878-5178

60. 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 proposed CA/FO based on comments received during the public comment period.

61. 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 Georgia was provided a prior opportunity to consult with Complainant regarding this matter.

62. Effective upon signature of this CA/FO by the Respondent, the Respondent agrees that the time period commencing on the date of its signature and ending on the date the EPA receives from the Respondent 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, the Respondent 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 the Respondent 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**

63. 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 the RESPONDENT, TriEst Ag Group Inc.:**

  
\_\_\_\_\_

NAME: David Rose  
TITLE: Vice President of Operations

Date: 8/22/16

**For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4:**

\_\_\_\_\_  
Denisse D. Diaz, Chief  
Clean Water Enforcement Branch  
Water Protection Division  
U.S. EPA, Region 4

Date: \_\_\_\_\_

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

<b>IN THE MATTER OF:</b>	)	
	)	<b>CONSENT AGREEMENT AND</b>
<b>TRIST AG GROUP, INC.</b>	)	<b>FINAL ORDER</b>
<b>900 WEST GOLDEN ROAD</b>	)	
<b>TIFTON, TIFT COUNTY, GEORGIA</b>	)	
	)	
<b>RESPONDENT</b>	)	<b>DOCKET NO. CWA-04-2016-4525(B)</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: \_\_\_\_\_

\_\_\_\_\_  
Tanya Floyd  
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 TriEst Ag Group, Inc., **Docket No. CWA-04-2016-4525(B)** (filed with the Regional Hearing Clerk on \_\_\_\_\_, 2016) was served on \_\_\_\_\_, 2016, in the manner specified to each of the persons listed below.

By hand-delivery: Paul Schwartz  
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: David Rose  
Vice President of Operations  
TriEst Ag Group, Inc.  
1101 Industrial Blvd.  
Greenville, North Carolina 27835

James A. Capp, Branch Chief  
Watershed Protection Branch  
ATTN: Jan Sammons, Unit Manager  
Erosion and Sedimentation Unit  
Georgia Environmental Protection Division  
420 International Parkway  
Suite 101  
Atlanta, Georgia 30354

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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