

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II  
290 BROADWAY  
NEW YORK, NEW YORK 10007-1866

**IN THE MATTER OF:**

Castle Point Medical Center  
Veterans Health Administration  
U.S. Department of Veterans Affairs  
9 Administration Circle  
Wappinger Falls, NY 12590

PWS ID. No. NY1319255

Respondent.

Proceeding Pursuant to Section 1447 of the Safe  
Drinking Water Act, 42 U.S.C. § 300j

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

**Docket No.**  
**SDWA-02-2016-8404**

**I. PRELIMINARY STATEMENT**

1. This is a civil administrative proceeding for the assessment of a civil penalty instituted pursuant to Section 1447(a) and (b) of the Safe Drinking Water Act ("SDWA" or the "Act"), 42 U.S.C. § 300j-6(a)-(b).
2. Section 1447 of the SDWA, 42 U.S.C. § 300j-6, authorizes the United States Environmental Protection Agency ("EPA") to take an enforcement action whenever it determines that a Federal agency is in violation of any requirement of the SDWA, EPA's regulations thereunder, or any regulation of a state drinking water program which has been authorized by EPA. Pursuant to Sections 1447(a) and (b), EPA may issue a penalty order against any Federal agency that owns or operates any public water system that violates a requirement of the Act.
3. EPA is initiating and concluding this administrative proceeding for the assessment of a civil penalty pursuant to Section 1447(b)(2) of the Act, 42 U.S.C. § 300j-6(b)(2), and 40 C.F.R. § 22.13(b) of 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" ("CROP"), which sets forth procedures for simultaneous commencement and conclusion of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order pursuant to 40 C.F.R. §§ 22.13(b)(2) and (3).
4. This Consent Agreement is entered into by the Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency ("Complainant") and the United States Department of Veterans Affairs ("Respondent"), pursuant to Section 1447 of the Act, 42 U.S.C. § 300j-6(b), and in accordance with 40 C.F.R. Part 22. The authority to issue this Consent Agreement has been duly delegated to the Director of the Division of Enforcement and Compliance Assistance of EPA Region 2.

5. This Consent Agreement and Final Order (collectively “CA/FO”) resolves violations of the specific requirements under subchapter XII of 42 U.S.C. §§ 300f to 300j-26, Sections 1401 to 1465 of the SDWA, as provided for in Sections II and III below.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent owns and/or operates the Castle Point Medical Center “public water system” located in Wappinger Falls, New York, within the meaning of Section 1401(4) of the SDWA, 42 U.S.C. § 300f(4), and 40 C.F.R. § 141.2.
2. Respondent is a “supplier of water” as that term is defined in Section 1401(5) of the SDWA, 42 U.S.C. § 300f(5), and 40 C.F.R. § 141.2.
3. The United States Department of Veterans Affairs is a “Federal agency” as defined by Section 1401(11) of the SDWA, 42 U.S.C. § 300f(11).
4. Respondent is a “person” within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. § 300f(12).
5. Pursuant to Section 1447(a) of the SDWA, 42 U.S.C. § 300j-6(a), each department, agency, or instrumentality of the executive branch of the Federal Government that owns or operates any public water system is subject to, and must comply with, all Federal, State, interstate, and local requirements, both substantive and procedural, to the same extent as any person is subject to such requirements.
6. Respondent’s public water system (“PWS”) provides water for human consumption. Respondent’s PWS regularly serves at least fifteen service connections used by year-round residents or regularly serves at least twenty-five individuals year-round, and is therefore a “community water system” (“CWS”), as defined by Section 1401(15) of the SDWA, 42 U.S.C. § 300f(15) and 40 C.F.R. 141.2. Respondent is therefore subject to the requirements of Part B of the SDWA, 42 U.S.C. § 300g, and its implementing regulations found at 40 C.F.R. Part 141.
7. On January 5, 2006, EPA promulgated the Long Term 2 Enhanced Surface Water Treatment Rule (“LT2ESWTR”), 40 C.F.R. Part 141 Subpart W. The LT2ESWTR supplements existing microbial treatment and targets public water systems with higher potential risks from *Cryptosporidium* in their source water. The LT2ESWTR further protects public health from illness due to *Cryptosporidium* and other microbial pathogens in drinking water through risk-targeted treatment requirements based on the results of source water monitoring. Additionally, the LT2ESWTR addresses the risks in uncovered finished water storage facilities by requiring public water systems to cover or treat such storage facilities.
8. The New York State Department of Health (“NYSDOH”) administers the Public Water Supply Supervision Program in the State of New York pursuant to Section 1413 of the SDWA. The approval and delegation of primary enforcement responsibility from EPA to NYSDOH was effective as of September 9, 1977. However, NYSDOH has not yet obtained primary enforcement responsibility for the LT2ESWTR. Therefore, as of the date of this Order, EPA has primary responsibility for enforcement of the LT2ESWTR.



9. Pursuant to 40 C.F.R. §141.700(b), public water systems using a surface water source or ground water source under the direct influence (“GWUDI”) of surface water are required to comply with 40 C.F.R. Part 141 Subpart W. The requirements of Subpart W for filtered systems apply to systems required to provide filtration treatment regardless of whether the system is currently operating a filtration system.
10. Pursuant to 40 C.F.R. §141.700(c), public water systems are required to conduct an initial round of source water monitoring for each plant that treats a surface water or GWUDI source.
11. Pursuant to 40 C.F.R. §141.701(d)(1) and (3), filtered systems are not required to conduct source water monitoring under the LT2ESWTR if the system will provide a total of at least 5.5-log of treatment for *Cryptosporidium*. However, such systems must provide notification in writing of “the intent to provide maximum treatment” by no later than the date the system is required to submit a sampling schedule pursuant to 40 C.F.R. §141.702, by July 1, 2008.
12. Respondent’s PWS uses surface water or GWUDI of surface water and serves fewer than 10,000 people. Therefore, Respondent was required to submit a sampling schedule in accordance with 40 C.F.R. §141.702, by July 1, 2008.
13. On October 17, 2008, EPA issued Administrative Order (SDWA-02-2009-8006), requiring that Respondent submit a LT2ESWTR sampling schedule or notification of intent to provide maximum treatment, as required by 40 C.F.R. §§141.701 - 141.703, by November 10, 2008, and begin first round source water monitoring no later than the month beginning December 1, 2008.
14. On November 6, 2008, Respondent requested additional time to submit a LT2ESWTR sampling schedule and conduct first round source water monitoring due to the installation of a new intake line over a period of eighteen months.
15. On December 17, 2008, EPA issued Administrative Order (SDWA-02-2009-8045), that granted Respondent’s request for additional time and provided Respondent with an enforceable schedule to comply with the requirements of the SDWA and 40 C.F.R. §§141.701 - 141.703, by no later than May 31, 2010.
16. On May 21, 2010, EPA received from Respondent an engineering report outlining plans to achieve the maximum level of *Cryptosporidium* treatment by October 1, 2014.
17. By letter dated August 18, 2010, EPA acknowledged receipt of Respondent’s engineering plan to meet the additional treatment requirements for *Cryptosporidium* of C.F.R. §141.711, by October 1, 2014.
18. On June 15, 2015, EPA issued Information Request Letter Docket Number SDWA-PWS-IR-007 to Respondent requesting documentation and certification demonstrating Respondent’s compliance status with the LT2ESWTR *Cryptosporidium* treatment requirement at Castle Point Medical Center PWS.

19. By letter dated August 3, 2015, Respondent provided a response to the Information Request Letter and acknowledged that compliance with the LT2ESWTR *Cryptosporidium* treatment requirement had not yet been achieved.
20. Based on information available to EPA, Respondent has failed to complete *Cryptosporidium* source water monitoring as required by §141.701(a), and did not provide a total of at least 5.5-log of treatment for *Cryptosporidium* by October 1, 2014 in lieu of monitoring as allowed by 40 C.F.R. §141.701(d). Respondent's failure to comply with the SDWA implementing regulations constitutes violations of the SDWA.
21. EPA has jurisdiction over the subject matter of this action pursuant to Section 1447 of the SDWA, 42 U.S.C. § 300j-6, and over Respondent.

### **III. CONSENT AGREEMENT**

1. Section II, Paragraphs 1-21 are re-alleged and incorporated by reference.
2. EPA and Respondent agree that it is in the public interest to resolve the issues alleged in this Consent Agreement without further litigation and the expense and effort that litigation entails.
3. Based upon the foregoing and pursuant to Section 1447 of the SDWA, 42 U.S.C. § 300j-6, and Section 22.13(b) of the CROP, 40 C.F.R. § 22.13(b), it is hereby agreed by and between EPA and Respondent, and Respondent voluntarily and knowingly agrees as follows:

### **IV. TERMS OF SETTLEMENT**

1. For the purpose of this proceeding, Respondent:
  - a. Admits the jurisdictional allegations of this CA/FO;
  - b. Admits the factual allegations contained herein;
  - c. Waives its right to contest the allegations, a judicial or administrative hearing, or to appeal this CA/FO; and
  - d. Consents to the payment of a civil penalty in the amount of twenty-four thousand dollars (\$24,000.00), as stated in Section V below.

### **V. PAYMENT OF CIVIL PENALTY**

1. Respondent shall pay a civil penalty to EPA in the amount of twenty-four thousand dollars (\$24,000.00). Such payment shall be made by cashier's or certified check, or by Electronic Fund Transfer ("EFT"). If the payment is made by check, then the check shall be payable to the "Treasurer, United States of America," and shall be mailed to:

United States Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center



PO Box 979077  
St. Louis, MO 63197-9000

The check shall be identified with a notation thereon listing the following: **IN THE MATTER OF THE UNITED STATES DEPARTMENT OF VETERANS AFFAIRS, CASTLE POINT MEDICAL CENTER PWS**, and shall bear thereon the **Docket Number SDWA-02-2016-8404**. Payment of the penalty must be received at the above address on or before sixty (60) calendar days after the Effective Date of this CA/FO.

If Respondent elects to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

- a. Amount of Payment: \$24,000.00.
- b. SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- c. Account Code for Federal Reserve Bank of New York receiving payment: 68010727
- d. Federal Reserve Bank of New York ABA routing number: 021030004
- e. Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"
- f. Name of Respondent: United States Department of Veterans Affairs
- g. Case Number: SDWA-02-2016-8404

Such EFT must be received on or before 60 calendar days after the Effective Date of this CA/FO. Whether the payment is made by check or by EFT, Respondent shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Lauren Fischer, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th floor  
New York, New York 10007-1866  
(212) 637-3231

and

Karen Maples, Regional Hearing Clerk  
U.S. Environmental Protection Agency – Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

- h. Failure to pay the amount in full within the time period set forth above may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
- i. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. § 162(f).
- j. Any requirement for the payment of funds established under the terms of this Consent Agreement shall be subject to the availability of appropriated funds, and no provision

herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

## VI. GENERAL PROVISIONS

1. The provisions of this CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns, including but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve Respondent of its obligation to comply with this CA/FO.
2. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.
3. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement and agrees to pay the penalty in accordance with the terms of this Consent Agreement.
4. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached Final Order, or the enforcement of the CA/FO.
5. Respondent knowingly and explicitly waives its rights under Section 1447(b)(3) of the Act, 42 U.S.C. § 300j-6(b)(3), to request or to seek any Hearing on or appeal of this Consent Agreement or the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.
6. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8, to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.
7. Respondent also hereby expressly waives its right to confer with the Administrator under Section 1447(b)(3) of the Act, 42 U.S.C. § 300j-6(b)(3).
8. EPA reserves the right to commence action against any person or persons, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the CROP. Further, EPA reserves any right and remedy available to it under the SDWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction to enforce the provisions of this CA/FO, following its filing with the Regional Hearing Clerk.
9. Failure to obtain adequate funds or appropriations from Congress does not release Respondent from its obligation to comply with the SDWA, the applicable regulations thereunder, or with this CA/FO. Nothing in this CA/FO shall be interpreted to require obligation or payment of funds in violation of the Antideficiency Act, 31 U.S.C. § 1341.



10. Issuance of the CA/FO does not constitute a waiver by EPA of its right to enforce the substantive legal requirements underlying this penalty assessment, either administratively or judicially pursuant to Section 1414 of the Act, 42 U.S.C. § 300g-3. Issuance of or compliance with this CA/FO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable requirements of the Act, of regulations promulgated thereunder and of any legal order or permit issued thereunder.
11. Complainant shall have the right to institute further actions to recover appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to EPA regarding matters at issue in the CA/FO are false or, in any material respect, inaccurate.
12. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.
13. Respondent consents to service by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.
14. This CA/FO shall become effective 30 days after the date of signature on the Final Order.
15. Each party hereto agrees to bear its own costs and fees in this matter.
16. Pursuant to 40 C.F.R. § 22.18(c), this CA/FO constitutes a full and final resolution of Respondent's liability for Federal civil penalties pursuant to Section 1447(b) of SDWA, 42 U.S.C. § 300j-6 for the specific violations and matters alleged in this Consent Agreement.
17. This Consent Agreement and the attached Final Order constitute the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CA/FO.
18. This action shall be considered closed upon EPA's receipt of payment by Respondent.

FOR RESPONDENT:

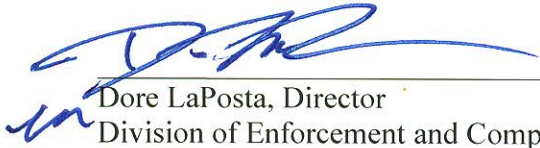
DATE: 7/25/16



Margaret B. O'Shea Caplan, Director  
VA Hudson Valley Health Care System  
Veterans Health Administration  
U.S. Department of Veterans Affairs  
9 Administration Circle  
Wappinger Falls, NY 12590

FOR COMPLAINANT:

DATE: 9/30/16



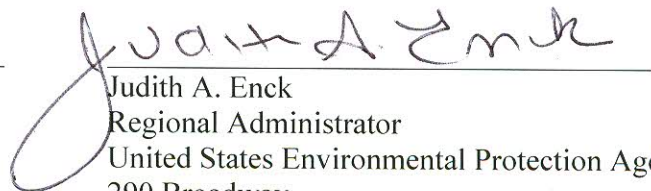
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
US Environmental Protection Agency - Region 2  
New York, New York 10007-1866



**VII. FINAL ORDER**

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as a Final Order. The effective date of this Final Order shall be 30 days after the date of signature.

DATE: 10/20/16



Judith A. Enck  
Regional Administrator  
United States Environmental Protection Agency - Region 2  
290 Broadway  
New York, New York 10007-1866

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

IN THE MATTER OF:

Castle Point Medical Center  
Veterans Health Administration  
U.S. Department of Veterans Affairs  
9 Administration Circle  
Wappinger Falls, NY 12590

PWS ID: NY1319255

Respondent.

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

**Docket No.**  
**SDWA-02-2016-8404**

**CERTIFICATE OF SERVICE**

I certify that, on the date noted below, I caused to be mailed, by certified mail, return receipt requested, a copy of the foregoing "CONSENT AGREEMENT AND FINAL ORDER" and a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," (40 C.F.R. Part 22) to the following person at the addresses listed below:

Margaret B. O'Shea Caplan, Director  
VA Hudson Valley Health Care System  
Montrose Campus  
2094 Albany Post Road  
Montrose, New York 10548

I sent by inter-office mail the original and a copy of the foregoing Consent Agreement/Final Order to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Date: OCT 24 2016

Print Name:   
Marie St. Germain, Branch Secretary  
New York, NY