

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

IN THE MATTER OF:

Anthony Ferraro
207 County Road 530
Southampton Township, NJ 08088

Respondent.

Original Tony's Pizza (NJ0333325)

Proceeding Pursuant to Section §1414(g)(3)(B) of the
Safe Drinking Water Act, 42 U.S.C. § 300g-3(g)(3)(B)

CONSENT AGREEMENT
AND
FINAL ORDER

Docket No.
SDWA-02-2018-8401

I. PRELIMINARY STATEMENT

1. This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 1414(g)(3)(B) of the Safe Drinking Water Act (the "Act"), 42 U.S.C. §300g-3(g)(3)(B).
2. EPA is initiating and concluding this administrative proceeding for the assessment of a civil penalty pursuant to Section 1414(g)(3)(B) of the Safe Drinking Water Act (the "Act"), 42 U.S.C. §300g-3(g)(3)(B) 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. §§22.18(b)(2) and (3).
3. This Consent Agreement is entered into by the Director of the Division of Enforcement and Compliance Assistance ("Director"), Region 2, United States Environmental Protection Agency ("Complainant") and Anthony Ferraro ("Respondent"), pursuant to Section 1414(g)(3)(B) of the Act, 42 U.S.C. §300g-3(g)(3)(B), and in accordance with 40 C.F.R. Part 22. The authority to issue this Consent Agreement has been duly delegated by the Regional Administrator of Region 2 to the Director.
4. The Complaint has charged Respondent with violating the terms and conditions of an Administrative Order ("AO") issued to Respondent pursuant to Section 1414(g) of the Act, 42 U.S.C. §300g-3(g), requiring compliance with an applicable requirement of the Act at

Respondent's public water system (Original Tony's Pizza) located in Southampton Township, New Jersey.

5. This Consent Agreement and Final Order (collectively "CA/FO") resolves violations of specific requirements under EPA AO Docket Number [SDWA-02-2017-8019].

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent owns and/or operates Original Tony's Pizza "public water system," within the meaning of Section 1401(4) of the SDWA, 42 U.S.C. §300f(4) and 40 C.F.R. §141.2, located in Southampton Township, New Jersey.
2. Respondent is a "supplier of water" as that term is defined in Section 1401(5) of the SDWA, 42 U.S.C. §300(f)(5), and 40 C.F.R. §141.2.
3. Respondent is a "person" within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. §300f(12).
4. According to SDWA §1414(g)(3)(b), 42 U.S.C. §300g-3(g)(3)(B), each person 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 supplier of water is subject to such requirements.
5. Respondent provides piped water for human consumption and serves at least 25 individuals per day for at least 6 months per year, and is therefore a transient non-community water system ("TNCWS") as defined by Section 1401(16) of the SDWA, 42 U.S.C. §300f(16), 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.
6. EPA published the Revised Total Coliform Rule ("RTCR") in the Federal Register ("FR") on February 13, 2013 (78 FR 10269) and minor corrections on February 26, 2014 (79 FR 10665). The RTCR is the revision to the 1989 Total Coliform Rule ("TCR") and is intended to improve public health protection. The RTCR establishes a maximum contaminant level ("MCL") for E. coli and total coliforms to initiate a "find and fix" approach to address fecal contamination that could enter into the distribution system. It requires public water systems ("PWSs") to perform assessments to identify sanitary defects and subsequently take action to correct them.
7. The New Jersey Department of Environmental Protection ("NJDEP") administers the Public Water Supply Supervision Program in New Jersey pursuant to Section 1413 of the SDWA. The approval of primary enforcement responsibility from EPA to New Jersey was effective as of July 13, 1979. NJDEP is the primacy agency, as that term is defined in 40 C.F.R. §142.2. NJDEP has not yet obtained primary enforcement responsibility for the RTCR, therefore, as of the date of the AO, the USEPA has primary responsibility for enforcement of the RTCR.

8. Respondent was required to begin complying with the compliance monitoring provisions of the RTCR beginning April 1, 2016.
9. Pursuant to 40 C.F.R. §141.853(a)(1), systems must develop a written sample siting plan that identifies sampling sites and a sample collection schedule that are representative of water throughout the distribution system not later than March 31, 2016. Routine and repeat sample sites and any sampling points necessary to meet the requirements of Subpart S must be reflected in the sampling plan.
10. Pursuant to 40 C.F.R. §141.854(a)(2), following any total coliform-positive sample, Respondent must comply with the repeat monitoring requirements and *E. coli* analytical requirements in 40 C.F.R. §141.858.
11. Pursuant to 40 C.F.R. §141.854(a)(3), once all monitoring required for a calendar month has been completed, systems must determine whether any coliform treatment technique triggers specified in 40 C.F.R. §141.859 have been exceeded. If any trigger has been exceeded, systems must complete assessments as required by 40 C.F.R. §141.859.
12. Pursuant to 40 C.F.R. §141.854(f), systems that have an *E. Coli* MCL violation and/or a coliform treatment technique violation must monitor monthly for total coliform. The system must continue monthly monitoring until it meets the reduced monitoring requirements outlined in §141.854(g).
13. Pursuant to 40 C.F.R. §141.858, Respondent must collect a set of repeat samples within 24 hours of being notified of any total coliform positive result. No fewer than 3 repeat samples must be collected for each total coliform-positive sample. If any routine or repeat sample is total coliform-positive, Respondent must analyze that total coliform-positive culture medium to determine if *E. coli* are present.
14. Pursuant to 40 C.F.R. §141.859(a)(1), a Level 1 Assessment is required if:
 - (a) Respondent has two or more total coliform-positive samples in the same month,
 - or
 - (b) Respondent fails to take every required repeat sample after any single total coliform-positive sample.
15. Pursuant to 40 C.F.R. §141.859(b)(3), the completed Level 1 Assessment form must be submitted to the State within 30 days after it learns that the treatment technique trigger was exceeded.
16. Pursuant to 40 C.F.R. §141.859(a)(2), a Level 2 Assessment is required if:
 - (a) Respondent has an *E. Coli* MCL violation, or
 - (b) Respondent triggers a second Level 1 Assessment within a rolling 12-month period.

17. Pursuant to 40 C.F.R. §141.859(b)(4), the completed Level 2 Assessment form must be submitted to the State within 30 days after it learns that the treatment technique trigger was exceeded.
18. Pursuant to 40 C.F.R. §141.860(a), a system is in violation of the MCL for *E. Coli* when any of the following conditions are met:
 - (a) The system has an *E. Coli*-positive repeat sample following a total coliform-positive routine sample.
 - (b) The system has a total coliform-positive repeat sample following an *E. Coli*-positive routine sample.
 - (c) The system fails to take all required repeat samples following an *E. coli*-positive routine sample.
 - (d) The system fails to test for *E. Coli* when any repeat sample tests positive for total coliform.
19. Pursuant to 40 C.F.R. §141.860(b), a treatment technique violation occurs when a system exceeds a treatment technique trigger in 40 C.F.R. §141.859(a) and then fails to conduct the required assessment or corrective action within the timeframe specified.
20. On July 14, 2017, NJDEP provided information to EPA indicating that Respondent failed to comply with the monitoring, reporting and MCL requirements for total coliform as outlined below and is, therefore, in violation of 40 C.F.R. Part 141, Subpart Y:
 - (a) In May 2016, Respondent had 3 total coliform-positive results and was required to conduct a Level 1 Assessment by June 28, 2016. Respondent failed to complete the assessment and received a treatment technique violation.
 - (b) In June 2016, Respondent had 6 total coliform-positive results and was required to conduct a Level 2 Assessment by August 7, 2016. Respondent failed to complete the assessment and received a treatment technique violation.
 - (c) In July 2016, Respondent had 7 total coliform-positive results and was required to conduct a Level 2 Assessment by August 26, 2016. Respondent failed to complete the assessment and received a treatment technique violation.
 - (d) In August and October 2016, Respondent failed to monitor for total coliforms.
 - (e) In May 2017, Respondent had 3 total coliform-positive results. Respondent is required to conduct a Level 2 Assessment.
 - (f) Respondent is on increased (monthly) monitoring.
21. On July 19, 2017, EPA issued an Administrative Order, Docket Number SDWA-02-2017-8019, requiring Respondent to comply with the monitoring, reporting, maximum contaminant level and treatment technique requirements for total coliform in accordance with 40 C.F.R. Part 141, Subpart Y. Additionally, the AO required Respondent to submit a copy of its sample siting plan and comply with all public notice requirements specified in 40 C.F.R. Part 141, Subpart Q within thirty (30) days of receipt of the Order, and to submit a copy of the public notice and certification that public notice was completed to EPA and NJDEP within forty-five (45) days of receipt of the Order.

22. According to EPA's records in the form of the United Parcel Service mail receipt (Tracking Number 1Z132 735 02 5120 7497), the AO was received by Respondent on August 16, 2017.
23. On August 17, 2017, Respondent informed EPA via telephone that the Level 2 Assessment had been completed. However, to date, Respondent has failed to send any of the required information to EPA.

III. CONSENT AGREEMENT

1. Section II, Paragraphs 1-23 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 1414(g)(3)(B) of the SDWA, 42 U.S.C. §300g-3(g)(3)(B), 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 the CA/FO;
 - b. Neither admits nor denies the factual allegations contained herein;
 - c. Waives its right to contest the allegations, a judicial or administrative hearing, or to appeal the CA/FO;
 - d. Consents to the payment of a civil penalty in the amount of **FIVE HUNDRED DOLLARS (\$500.00)**, as stated in Section V below.

V. PAYMENT OF CIVIL PENALTY

1. Respondent shall pay a civil penalty to EPA in the amount of **FIVE HUNDRED DOLLARS (\$500.00)**. Such payment shall be made by 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 ORIGINAL TONY'S PIZZA**, and shall bear thereon the **Docket Number SDWA-02-2018-8401**. Payment of the penalty must be received at the above address on or before forty-five (45) calendar days after the Effective Date of the 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: \$500.00.
- 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: Anthony Ferraro
- g. Case Number: SDWA-02-2018-8401

Such EFT must be received on or before 45 calendar days after the Effective Date of the 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:

Phyllis Feinmark, Esq., Chief
Water and General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
(212) 637-3232

and

Karen Maples, Regional Hearing Clerk
U.S. Environmental Protection Agency – Region 2
290 Broadway, 16th 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. Further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. §3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30-day period (or any portion thereof) following

the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

- j. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. §162(f).
- k. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondent's federal or state taxes.

VI. GENERAL PROVISIONS

1. The provisions of the 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 the 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 knowingly and explicitly waives its rights under Section 1414(g)(3)(B) of the Act, 42 U.S.C. §300g-3(g)(3)(b), 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.
5. 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.
6. Respondent also hereby expressly waives its right to confer with the Administrator under Section 1414(g)(3)(B) of the Act, 42 U.S.C. §300g-3(g)(3)(B).
7. 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 the CA/FOs, following its filing with the Regional Hearing Clerk.

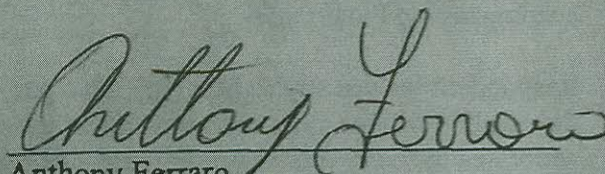
Respondent's full compliance with this Consent Agreement shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Respondent's full compliance with this Consent Agreement shall only resolve Respondent's liability for federal civil penalties for the violations and facts described in Section II of this Consent Agreement.

8. 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 the 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.
9. 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.
10. Respondent consents to service by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.
11. Each party hereto agrees to bear its own costs and fees in this matter.

FOR RESPONDENT:

DATE:

4-26-18



Anthony Ferraro
Original Tony's Pizza
207 County Road 530
Southampton Township, NJ 08088

In the Matter of:

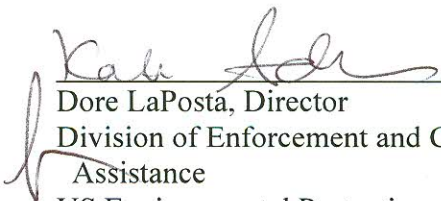
Original Tony's Pizza

PWS ID: NJ0333325

Docket No. SDWA-02-2018-8401

FOR COMPLAINANT:

DATE: **AUG 17 2018**



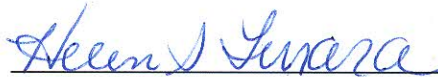
Dore LaPosta, Director
Division of Enforcement and Compliance
Assistance
US Environmental Protection Agency
Region 2
New York, New York 10007-1866

In the Matter of:
Original Tony's Pizza
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VIII. FINAL ORDER

The Regional Judicial Officer for the U.S. Environmental Protection Agency, Region 2, as delegated by 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 an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.

DATE: August 27, 2018



HELEN S. FERRARA
Regional Judicial Officer
U.S. EPA, Region 2
290 Broadway
New York, NY 10007-1866

In the Matter of:
Original Tony's Pizza
PWS ID: NJ0333325
Docket No. SDWA-02-2018-8401

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Anthony Ferraro
207 County Road 530
Southampton Township, NJ 08088

Respondent.

Original Tony's Pizza (NJ0333325)

Proceeding Pursuant to Section §1414(g)(3)(B) of the
Safe Drinking Water Act, 42 U.S.C. §300g-3(g)(3)(B)

Proceeding to Assess Civil
Penalty Under Section 1414(g)(3)(B)
of the
Safe Drinking Water Act

Docket No.
SDWA-02-2018-8401

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” (CA/FO) to the following person at the address listed below:

Anthony Ferraro
207 County Road 530
Southampton Township, NJ 08088

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

Date: AUG 28 2018