

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866**

U.S. Environmental  
Protection Agency-Reg 2  
2015 SEP 25 AM 10:21  
REGIONAL HEARING  
CLERK

**IN THE MATTER OF:**

Ocean Gate Water Department  
Borough of Ocean Gate  
801 Ocean Gate Ave.  
Ocean Gate, New Jersey 08740

PWS ID: NJ1521001

Respondent

Proceeding Pursuant to §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-02-2015-8403

**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 the Borough of Ocean Gate ("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 Complainant 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 (“Ocean Gate Water Department”) in Ocean Gate, New Jersey.
5. This Consent Agreement and Final Order (collectively “CA/FO”) resolves violations of specific requirements under EPA AO Docket Number SDWA-02-2015-8016.

## **II. Findings of Fact and Conclusions of Law**

1. Respondent owns and/or operates the Ocean Gate Water Department public water system (“Ocean Gate Water Department PWS”), 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 Ocean Gate, New Jersey.
2. Respondent is a “supplier of water” within the meaning of Section 1401 (5) of the SDWA, 42 U.S.C. §300f(5), and 40 C.F.R. §141.2.
3. Respondent is a “person” as defined in Section 1401(12) of SDWA, 42 U.S.C. §300f(12), and 40 C.F.R. §141.2, and is subject to an Administrative Order issued under Section 1414(g)(1) of the SDWA, 42 U.S.C. §300g-3(g)(1).
4. Respondent’s public water system (“PWS”) provides piped water for human consumption. Respondent’s PWS has at least 15 service connections or serves an average of at least 25 people 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.
5. The New Jersey Department of Environmental Protection (“NJDEP” or “State”) 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 NJDEP was effective as of July 13, 1979. NJDEP is the primacy agency, as that term is defined in 40 C.F.R. §142.2. However, on October 16, 2014, NJDEP referred the Ocean Gate Water Department PWS to EPA for appropriate action.
6. 40 C.F.R. §§141.23(a), 141.24(f) and 141.26(a)(i) outlines the monitoring requirements for inorganic, organic and radionuclide contaminants at groundwater systems. CWSs shall take a minimum of one sample at every entry point to the distribution system which is representative of each well after treatment. If a system draws water from more than one source and the sources are combined before distribution, the system must sample at an entry point to the distribution system during periods of normal operating conditions (i.e. when water representative of all sources is being used).
7. Pursuant to 40 C.F.R. §141.201(a) and (b), each operator or owner of a PWS must give notice for all violations of national primary drinking water regulations, including violations to the MCL, treatment technique (“TT”), monitoring requirements and testing procedures. Public notice requirements are divided in 3 tiers, to take into account the seriousness of the violation or situation and any potential adverse health effect that may



be involved.

8. On October 7, 2014, in response to a citizen complaint, EPA and NJDEP conducted an inspection of the Respondent's PWS which included a file review of compliance data.
9. On October 30, 2014, EPA issued an Inspection Report citing violations identified, including the failure to monitor for inorganic, organic and radiological contaminants during normal operating conditions.
10. On October 30, 2014, EPA issued an Administrative Order, Docket Number SDWA-02-2015-8016, to establish an enforceable schedule to ensure Respondent's compliance with the requirements of the SDWA and applicable regulation. The AO required Respondent to notify the public of the violations identified during the October 7, 2014 inspection, in the Consumer Confidence Report ("CCR") due July 1, 2015. According to EPA's records in the form of the certified mail return receipt (Article Number 7005 3110 0000 5967 7391), the AO was received by Respondent on November 6, 2014.
11. Based on information available to EPA, Respondent failed to notify the public of the violations identified during the October 7, 2015 inspection in the 2015 CCR Report and has therefore failed to demonstrate compliance with the requirements specified in 40 C.F.R. §§141.201 (a) and (b) and Section III, and violated Paragraph 16 of AO SDWA-02-2015-8016.

### III. Consent Agreement

1. Section II, Paragraphs 1-11 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 Act, 42 U.S.C. § 300g-3(g)(3)(B), and the CROP 40 C.F.R. §§ 22.18, 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. Neither admits nor denies the factual allegations contained herein;
  - c. Waives its right to contest the allegations, request 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 **ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00)**, as stated in Section V below.

### V. Payment of Civil Penalty

1. Respondent shall pay a civil penalty to EPA in the amount of **One Thousand Five Hundred Dollars (\$1,500.00)**. 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:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

The check shall be identified with a notation thereon listing the following: **IN THE MATTER OF OCEAN GATE WATER DEPARTMENT**, and shall bear thereon the **Docket Number SDWA-02-2015-8403**. Payment of the penalty must be received at the above address on or before thirty (30) calendar days after the Effective Date of this CA/FO (the "due date").

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

- a. Amount of Payment: \$1,500
- 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: Borough of Ocean Gate
- g. Case Number: SDWA-02-2015-8403

Such EFT must be received on or before 30 calendar days after the Effective Date of this CA/FO.

Whether the payment is made by check or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Phyllis S. Feinmark, Esq., Chief  
Water & General Law Branch  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th floor  
New York, NY 10007-1866

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. 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 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 CAFO.
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. 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.
- 8. 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.
- 9. The provisions of this Consent Agreement and Final Order shall be binding upon the Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns.
- 10. Each party hereto agrees to bear its own costs and fees in this matter.
- 11. Respondent consents to service upon Respondent by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

FOR THE RESPONDENT:

Dated this 19<sup>th</sup> day of: September, 2015



HON. PAUL KENNEDY  
Mayor  
Borough of Ocean Gate  
801 Ocean Gate Ave.  
Ocean Gate, NJ 08740

FOR THE COMPLAINANT:

Dated this 21<sup>st</sup> day of: September, 2015



MS. DORE LAPOSTA  
Director  
Division of Enforcement and Compliance  
Assistance  
U.S. Environmental Protection Agency  
Region 2  
New York, NY 10007-1866

**VII. 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: Sept 22, 2015



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



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 Broadway  
New York, New York 10007

In The Matter Of  Ocean Gate Water Department Borough of Ocean Gate 801 Ocean Gate Ave. Ocean Gate, New Jersey 08740  PWS ID: NJ1521001  Respondent  Proceeding pursuant to §1414(g)(3)(B) of the Safe Drinking Water Act, 42 U.S.C. §300g-3 (g)(3)(B)	<p style="text-align: center;"><u>CONSENT AGREEMENT</u> <u>AND</u> <u>FINAL ORDER</u></p> <p style="text-align: center;">DOCKET NO. SDWA-02-2015-8403</p>
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**CERTIFICATE OF SERVICE**

I certify that, on the date noted below, I served the foregoing fully executed Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner.

Copy by Certified Mail to Respondent's Counsel  
Return Receipt Requested:

Honorable Paul Kennedy  
Mayor  
Borough of Ocean Gate  
801 Ocean Gate, NJ 08740

Original and One Copy  
By Hand-Delivery to :

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007-1866

Date: 9.23.15

NAME 