

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

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2008 AUG 14 AM 8:38
REGIONAL HEARING
CLERK

IN THE MATTER OF

William E. Smith
d/b/a Miss Lucy's Restaurant
PO Box 299
Friis Bay, Coral Bay
St. John, VI 00831-0299,

Respondent.

Proceedings Under Section 1423(c)
of the Safe Drinking Water Act,
42 U.S.C. §300h-2(c)

DOCKET NO. SDWA-02-2008-8905

**CONSENT AGREEMENT
AND
FINAL ORDER**

CONSENT AGREEMENT

Complainant, the United States Environmental Protection Agency ("EPA"), having issued the Complaint, Notice of Violation and Proposed Administrative Order herein on March 14, 2008, against Respondent William E. Smith d/b/a Miss Lucy's Restaurant and;

Complainant and Respondent having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent, the Parties agree as follows:

I. PRELIMINARY STATEMENT

1. EPA initiated this proceeding for the assessment of a civil penalty and compliance with the Safe Drinking Water Act pursuant to Section 1423(c) of the Safe Drinking Water Act, 42 U.S.C. §300h-2(c).
2. The Complaint alleges violations of the Safe Drinking Water Act Part C – Underground Injection Control as they pertain to a Class V injection well located at located at Miss Lucy's Restaurant, Friis Bay, Coral Bay St. John, VI 00802. The Complaint alleges that the Class V well is owned and operated by Respondent.
3. This action was public noticed on April 7, 2008. No public comment was received.
4. An Answer was filed by Respondent, together with a Permit Application dated April 25, 2008.
5. No Hearing Request was filed by Respondent.
6. The Proposed Administrative Order issued on March 14, 2008 offered Respondent the option of achieving compliance with the SDWA by submitting a permit application for continued use of the Class V well.
7. Respondent expressed his desire to continue to operate the Class V well and submitted a complete permit application dated April 25, 2008.
8. This Consent Agreement and Final Order shall apply to and be binding on Respondent, the business officers, directors, employees, successors and assigns, including but not limited to, subsequent purchasers.
9. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the allegations contained in the Complaint, consents to the terms of this Consent Agreement and Final Order.
10. Respondent hereby waives his rights to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint or on any terms of this Consent Agreement and Final Order.

II. TERMS OF SETTLEMENT

A. PENALTY

11. Pursuant to Section 1423(c) of the Safe Drinking Water Act, EPA has considered statutory factors, including the seriousness of the violation(s), the economic benefit (if any) resulting from the violation(s), the history of such violation(s), the good-faith efforts to comply with the applicable requirements, and other matters as justice may require.
12. EPA has determined that an appropriate civil penalty to settle this action is in the amount of **FIVE HUNDRED (\$500) DOLLARS**.
13. For the purpose of settlement, Respondent consents to the issuance of this Consent Agreement and consents to the payment of the civil penalty cited in the foregoing Paragraph.
14. Not more than forty-five (45) days after the date of issuance of the executed Final Order signed by the Regional Administrator, EPA, Region 2, Respondent shall pay the penalty of **FIVE HUNDRED (\$500) DOLLARS** by cashier's or certified check, payable to the "Treasurer of the United State of America", identified with the notation of the name and docket number of this case, set forth in the caption on the first page of this document. This check shall be mailed to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Respondents shall also send copies of this payment to each of the following:

Dennis McChesney, Chief
Groundwater Compliance Section
Water Compliance Branch
U.S. EPA, Region 2
290 Broadway, 20th Floor
New York, NY 10007

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007

Payment must be received at the above address on or before forty-five (45) calendar days after the date of signature of the Final Order (at the end of this document). The date by which payment must be received shall hereafter be referred to as the “due date”.

- a. Failure to pay the penalty in full according to the above provisions will result in a referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
 - b. 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.
 - c. In addition, pursuant to Section 1423(c)(7) of the Safe Drinking Water Act, 42 U.S.C. § 300h-2(c)(7), if payment is not received by the due date, a civil action may be commenced in Federal District Court to recover the amount assessed, plus costs, attorneys’ fees and interest at currently prevailing rates from the date the order is effective. In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.
 - d. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
15. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondents’ federal or state taxes.

B. GENERAL PROVISIONS

16. Respondent shall transmit all notices, reports and submissions required by this Consent Agreement and Final Order to:

Dennis McChesney, Chief
Groundwater Compliance Section
Water Compliance Branch
U.S. EPA, Region 2
290 Broadway, 20th Floor
New York, NY 10007

17. The Respondent waives any right it may have pursuant to 40 CFR §22.8 or statute to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that the Administrator accept this Consent Agreement and issue the accompanying Final Order.
18. Violations of the terms of the Final Order after its effective date or date of final judgment as described in Section 1423(c)(6) of the Act, 42 U.S.C. §300h-2(c)(6), may subject Respondent to further enforcement action, including a civil action for enforcement of the Final Order under Section 1423(b) of the Act, 42 U.S.C. §300h-2(b), and civil and criminal penalties for violations of the compliance terms of the Final Order under Section 1423(b)(1) and (2) of the Act, 42 U.S.C. §300h-2(b)(1) and (2).
19. This Consent Agreement and Final Order shall not relieve Respondent of its obligations 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.
20. Nothing in this Consent Agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Consent Agreement or of the statutes and regulations upon which this Consent Agreement is based, or for Respondent's violation of any applicable provision of law.
21. Issuance of the Final Order is not an election by EPA to forego any civil or criminal action otherwise authorized under the Act.
22. This Consent Agreement and Final Order constitutes a settlement by EPA of all claims for civil penalties pursuant to the Safe Drinking Water Act for the violations alleged in the Complaint. Nothing in this Consent Agreement and Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this Consent Agreement and Final Order shall not be a


defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

23. Each undersigned representative of the Parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.

Each party shall bear its own costs and attorney's fees in connection with the action resolved by this Consent Agreement and Order.


RESPONDENT

WILLIAM E. SMITH, D/B/A MISS LUCY'S RESTAURANT:

BY: 
William E. Smith
d/b/a Miss Lucy's Restaurant
Friis Bay, Coral Bay
St. John, VI

DATE: 07-08-08

COMPLAINANT:

BY: 
Dore LaPosta, Director
Division of Enforcement and Compliance Assistant
U.S. EPA, Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866

DATE: 7/27/08

III. 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 the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.

DATE:

8/5/08



ALAN J. STEINBERG
Regional Administrator
United States Environmental
Protection Agency - Region 2
290 Broadway
New York, New York

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SDWA-02-2008-8905

CERTIFICATE OF SERVICE

I certify that the foregoing "Consent Agreement and Final Order" was sent to the following persons, in the manner specified, on the date below:

Original and One Copy
Hand Delivered:

Karen Maples
Regional Hearing Clerk
U.S. EPA, Region 2
290 Broadway
New York, New York 10007-1866

Copy by Certified Mail
Return Receipt Requested:

Mr. William E. Smith
PO Box 299
Friis Bay, Coral Bay
St. John, VI 00831-0299

Date: 8-13-08

Signed: Ana Madera