

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

U.S. ENVIRONMENTAL
PROTECTION AGENCY REGION 2

2009 NOV 10 PM 1:57

REGIONAL HEARINGS
CLERK

IN THE MATTER OF:

Carambola Golf Course
Frederiksted, St. Thomas, Virgin Islands 00851

PWS ID: VI1000373

Respondent

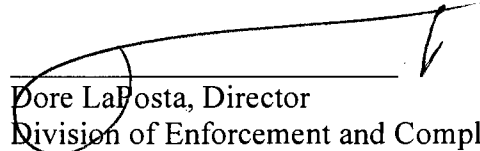
Proceeding Pursuant to §1414(g)(3)(B) of the Safe
Drinking Water Act, 42 U.S.C. §300g-3(g)(3)(B)

Docket No.
SDWA-02-2009-8406

NOTICE OF WITHDRAWAL
OF COMPLAINT

The Administrative Complaint in this matter was issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by § 309(g)(2)(A) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(A). The Administrator delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director of the Division of Enforcement and Compliance Assistance ("DECA") of EPA, Region 2, Complainant in this matter. Notice is hereby given that Complainant withdraws, without prejudice, the Administrative Complaint, Docket No. SDWA-02-2009-8406, issued on or about May 18, 2009, against the Carambola Golf Course. This action is taken pursuant to 40 C.F.R. § 22.14(d).

Date: NOVEMBER 5, 2009


Dore LaPosta, Director
Division of Enforcement and Compliance
Assistance
U.S. Environmental Protection Agency
290 Broadway
New York, NY 10007-1866

In The Matter of Carambola Golf Course
Docket No. SDWA-02-2009-8406

CERTIFICATE OF SERVICE

I certify that the original "Notice of Withdrawal of Complaint," Docket No. SDWA-02-2009-8406, and a copy of which accompanies this Certificate of Service, was [hand carried / mailed] to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, 290 Broadway - 16th Floor, New York, New York 10007, on NOV 10 2009,


and that a true copy was sent by Certified Mail, Return Receipt Requested to:

Greg McCulloch
Carambola Golf Course
P.O. Box 718 Kingshill
72 Estate River
Frederiksted, St. Thomas VI 00851

and a true copy was hand delivered to:

Nadine Orrell, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway - 16th Floor
New York, New York 10007-1866

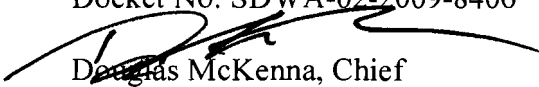
Dated NOV 10 2009
New York, New York



[Signature of Sender]

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

DATE: NOV - 5 2009

SUBJECT: Withdrawal of Complaint
In The Matter of Carambola Golf Course
Docket No. SDWA-02-2009-8406

FROM:  Douglas McKenna, Chief
Water Compliance Branch


Phyllis Feinmark, Chief
Water and General Law Branch

TO: Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Attached for your review and signature is a Notice of Withdrawal of the Complaint in the above referenced matter.

Background

Pursuant to Subpart C-Prehearing Procedures of 40 C.F.R., Part 22, the Consolidated Rules of Practice Governing the Administrative Assessment of Class I Civil Penalties under the Clean Water Act, at § 22.14(d), Withdrawal of the Complaint: “[C]omplainant may withdraw the complaint, or any part thereof, without prejudice one time before the answer has been filed.”

On April 3, 2008, the United States Environmental Protection Agency (“EPA”) issued an Administrative Order (“Order”) to the Carambola Golf Course (“Carambola”) requesting that it conduct monitoring for arsenic as required by the Arsenic Rule, 40 C.F.R. § 141.23 (“Arsenic Rule”). The Order required Carambola to submit the monitoring data to EPA and to the Virgin Islands Department of Planning and Natural Resources (“VIDPNR”), within 30 days of receipt of the Order.

On October 15, 2008, EPA issued a letter to Carambola requesting immediate compliance with the requirements of the Order. EPA has evidence that Carambola received the immediate compliance letter on October 29, 2008. By May 2009 EPA had not received the required documents from Carambola. After consulting with VIDPNR, on May 18, 2009, EPA issued an Administrative Complaint, Docket No. SDWA-02-2009-8406, to Carambola, pursuant to Section 1414(g)(3)(B) of the Safe Drinking Water Act, 42 U.S.C. § 300g-3(g)(3)(B). The Complaint sought to assess a civil penalty in the amount of \$6,500 for violations of the April 3, 2008, Order. The Complaint alleged that Carambola failed to submit arsenic data, in accordance with 40 C.F.R. § 141.23.

EPA subsequently determined that Carambola had, in fact, submitted the arsenic monitoring data to VIDPNR prior to the issuance of EPA's Complaint. Although Carambola failed to submit the requisite documents to EPA, its submittal to the VIDPNR indicates its intent to comply with EPA's Order. Upon securing and reviewing a copy of Carambola's arsenic monitoring data from VIDPNR, EPA determined that Carambola's public water system has low levels of arsenic.

Recommendation

We therefore recommend that the Complaint against Carambola be withdrawn without prejudice where good cause exists for the following reasons: (a) Carambola indicated its intent to comply with EPA's April 3, 2008, Order by submitting the required documents to the VIDPNR; (b) Carambola's public water system has low levels of arsenic; and (c) Carambola is a small system with no prior experience dealing with the EPA. Since a Presiding Officer has not been assigned to the case, nor has an Answer been filed by Carambola, EPA is authorized pursuant to 40 C.F.R. § 22.14(d), to withdraw the Complaint as a matter of right.

For the reasons set forth above, we recommend your approval and signature of the attached Withdrawal of the Complaint.