

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

U.S. Environmental Protection Agency-Reg 2
2017 JUL 10 PM 4:00
REGIONAL HEARING
CLERK
JUL 27 PM 2:00

IN THE MATTER OF:

Virgin Islands Department of Human Services
1303 Hospital Ground Suite 220
Knud Hansen Complex Building A
St. Thomas, VI 00802

Respondent.

Wilhelm George Head Start (VI0000315)
Savan Head Start (VI1000125)
Lindbergh Bay Head Start (VI1000127)
Sugar Estate Thomas Head Start (VI1000124)

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 Nos.
SDWA-02-2017-8401
SDWA-02-2017-8402
SDWA-02-2017-8403
SDWA-02-2017-8404

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 Virgin Island Department of Human Services ("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 four of Respondent’s public water systems (Wilhelm George Head Start, Savan Head Start, Lindbergh Bay Head Start and Sugar Estate Thomas Head Start) located in St. Thomas, United States Virgin Islands.
5. This Consent Agreement and Final Order (collectively “CA/FO”) resolves violations of specific requirements under EPA AO Docket Numbers [SDWA-02-2017-8401, SDWA-02-2017-8402, SDWA-02-2017,8403, SDWA-02-2017-8404].

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent owns and/or operates the Wilhelm George Head Start, Savan Head Start, Lindbergh Bay Head Start and Sugar Estate Thomas Head Start “public water systems,” 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 St. Thomas, United States Virgin Islands.
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’s public water systems (“PWSs”) provide piped water for human consumption and regularly serve a population of at least 25 individuals for at least 6 months per year, and is therefore a non-transient non-community water system (“NTNCWS”) 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. The Virgin Islands Department of Planning and Natural Resources (“VIDPNR” or “State”) administers the Public Water Supply Supervision Program in the United States Virgin Islands pursuant to Section 1413 of the SDWA, 42 U.S.C. §300g. The approval of primary enforcement responsibility from EPA to VIDPNR was effective as of September 22, 1979. VIDPNR is the primacy agency, as that term is defined in 40 C.F.R. §142.2. On August 1, 2011, VIDPNR referred the following PWSs to EPA for appropriate action: Wilhelm George Head Start, Savan Head Start, Lindbergh Bay Head Start and Sugar Estate Thomas Head Start.

7. On January 4, 2006, EPA promulgated the Stage 2 Disinfectants and Disinfection Byproducts Rule ("Stage 2 DBPR"), regulated under 40 C.F.R. Part 141, Subparts U and V, to provide for increased public health protection against the potential risks for cancer and reproductive developmental health effects associated with disinfection byproducts ("DBPs"). The Stage 2 DBPR introduced a new method for calculating compliance with the maximum contaminant levels ("MCL") for total trihalomethanes ("TTHM") and haloacetic acids ("HAA5"), referred to as the locational running annual average ("LRAA").
8. Respondent was required to begin complying with the compliance monitoring provisions of the Stage 2 DBPR beginning October 1, 2013.
9. Pursuant to 40 C.F.R. §141.621 Respondent is required to monitor for TTHM, and HAA5 pursuant to 40 C.F.R. §§ 141.621, 141.623 and 141.625.
10. Pursuant to 40 C.F.R. § 141.64(b)(2), Respondent is required to demonstrate compliance with the MCLs based on the locational running annual average.
11. Based on information provided by VIDPNR, Respondent failed to fully comply with the Stage 2 DBPR at the above referenced PWSs.
12. On July 2, 2014, EPA issued Administrative Orders, Docket Numbers SDWA-02-2014-8022, SDWA-02-2014-8024, SDWA-02-2014-8025 and SDWA-02-2014-8026 requiring Respondent to comply with the Stage 2 DBPR. According to EPA's records in the form of the certified mail return receipt (Article Number 7005 3110 0000 5933 9268), the AOs were received by Respondent on July 11, 2014

WILHELM GEORGE HEAD START

13. On February 11, 2015, Respondent provided information to EPA indicating that Respondent failed to complete four consecutive quarters of monitoring in violation of 40 C.F.R. §141.625.
14. On October 11, 2016, Respondent informed EPA that Respondent failed to conduct required quarterly monitoring during the 2nd through 4th quarters of 2015 and 1st through 3rd quarters of 2016, in continued violation of 40 C.F.R. § 141.625.

SAVAN HEAD START

15. On February 11, 2015, VIDPNR provided information to Respondent failed to conduct four consecutive quarters of monitoring in violation of 40 C.F.R. §141.625.
16. On October 11, 2016, Respondent informed EPA that required quarterly monitoring was not conducted during the 1stQ and 2ndQ of the 2016 monitoring period.

LINDBERGH BAY HEAD START

17. On October 11, 2016, Respondent informed EPA that required annual monitoring was not conducted in August of 2015 and 2016.

SUGAR ESTATE THOMAS HEAD START

18. On October 11, 2016, Respondent informed EPA that the annual results in 2015 exceeded the MCL for TTHM and failed to conduct required quarterly monitoring during the 2016 monitoring period.
19. On December 29, 2016, Respondent provided EPA with a copy of their Drinking Water Compliance Management Plan (DWCMP). The stated goal of the DWCMP is to increase the level of accountability in adherence of regulatory obligations for monitoring and reporting under the Safe Drinking Water Act. Among other things, the DWCMP includes Stage 2 DBPR monitoring schedules for the public water systems subject to this action.

III. CONSENT AGREEMENT

1. Section II, Paragraphs 1-18 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/FOs;
 - 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/FOs;
 - d. Consents to the payment of a civil penalty in the amount of **ONE THOUSAND DOLLARS (\$1,000.00)**, as stated in Section V below.

V. PAYMENT OF CIVIL PENALTY

1. Respondent shall pay a civil penalty to EPA in the amount of **ONE THOUSAND DOLLARS (\$1,000.00)**. 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 VIRGIN ISLANDS DEPARTMENT OF HUMAN SERVICES**, and shall bear thereon the **Docket Numbers SDWA-02-2017-8401, SDWA-02-2017-8402, SDWA-02-2017-8403 and SDWA-02-2017-8404**. 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/FOs.

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

- a. Amount of Payment: \$1,000.00.
- 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: Virgin Islands Department of Human Services
- g. Case Numbers: SDWA-02-2017-8401, SDWA-02-2017-8402, SDWA-02-2017-8403 and SDWA-02-2017-8404

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

Tim Murphy, 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) 637-3236

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/FOs 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/FOs.
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 Orders. 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 Orders.
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 Orders.

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/FOs 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/FOs 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 Orders 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: 6/20/2017

Felecia L. Blyden

Felecia Blyden, Commissioner
Virgin Islands Department of Human Services
1303 Hospital Ground Suite 220
Knud Hansen Complex Building A
St. Thomas, VI 00802

FOR COMPLAINANT:

DATE: 6/29/17

Dore LaPosta

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:

Wilhelm George Head Start (VI0000315), Docket No. SDWA-02-2017-8401
Savan Head Start (VI1000125), Docket No. SDWA-02-2017-8402
Lindbergh Bay Head Start (VI1000127), Docket No. SDWA-02-2017-8403
Sugar Estate Thomas Head Start (VI1000124), Docket No. SDWA-02-2017-8404

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: July 6, 2017



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

In the Matter of:

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Sugar Estate Thomas Head Start (VI1000124), Docket No. SDWA-02-2017-8404

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Virgin Islands Department of Human Services
1303 Hospital Ground Suite 220
Knud Hansen Complex Building A
St. Thomas, VI 00804

Respondent.

Wilfred George Head Start (VI0000315)
Savan Head Start (VI1000314)
Lindbergh Bay Head Start (VI1000127)
Sugar Estate Thomas Head Start (VI1000124)

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 Nos.

SDWA-02-2017-8401
SDWA-02-2017-8402
SDWA-02-2017-8403
SDWA-02-2017-8404

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

Felecia Blyden, Commissioner
Virgin Islands Department of Human Services
1303 Hospital Ground Suite 220
Knud Hansen Complex Building A
St. Thomas, VI 00802

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

Date: JUL 10 2017


