

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II

290 BROADWAY

NEW YORK, NEW YORK 10007-1866

August 25, 2023 @ 7:52 am

USEPA – Region II

Regional Hearing Clerk

IN THE MATTER OF:

Legoland New York Resort
Goshen, NY 10924

PWS ID. NY3530326

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-02-2023-8402

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 Enforcement and Compliance Assurance Division (“Director”), Region 2, United States Environmental Protection Agency (“Complainant”) and Legoland New York Resort (“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 (Legoland New York Resort) located in Goshen, New York.

5. This Consent Agreement and Final Order (collectively “CA/FO”) resolves violations of specific requirements under EPA AO Docket Number SDWA-02-2023-8030.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

6. Respondent owns and/or operates the Legoland New York Resort “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 Goshen, New York.
7. 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.
8. Respondent is a “person” within the meaning of Section 1401(12) of the SDWA, 42 U.S.C. §300f(12), and is subject to an Administrative Order (“AO”) issued under Section 1414(g)(1) of the SDWA, 42 U.S.C. §300g-3(g)(1).
9. 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.
10. Respondent’s public water system provides piped water for human consumption and regularly serves a population of at least 25 individuals for at least 6 months per year, and is therefore a “non-transient non-community water system” 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 et seq., and its implementing regulations found at 40 C.F.R. Part 141.
11. 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”).
12. The New York State Department of Health (“NYSDOH”) administers the Public Water Supply Supervision Program in New York pursuant to Section 1413 of the SDWA. The approval of primary enforcement authority from EPA to the NYSDOH was effective as of September 9, 1977. However, the NYSDOH has not yet obtained approval of primary enforcement authority for the Stage 2 DBPR. Therefore, as of the date of the Administrative Order, Docket Number SDWA-02-2023-8030 and this action, the USEPA has primary responsibility for enforcement of the Stage 2 DBPR.

13. Based on information in the Safe Drinking Water Information System, Respondent utilizes a surface water purchased source and serves approximately 16,000 people.
14. Pursuant to 40 C.F.R. §141.621(a), Respondent is required to monitor for TTHM and HAA5. Specifically, the system is required to take dual sample sets (TTHM and HAA5) every 90 days at 4 monitoring locations. Additionally, the system must monitor during the month of their highest DBP concentrations. Pursuant to 40 C.F.R. §141.622, respectively, Respondent must identify sampling locations in its Subpart V Monitoring Plan.
15. Pursuant to 40 C.F.R. §§141.64(b)(2) and 141.620(d), Respondent must calculate LRAAs for TTHM and HAA5 using monitoring results collected and determine whether each LRAA exceeds the MCL. If Respondent fails to complete four consecutive quarters of monitoring, Respondent must calculate compliance with the MCL based on the average of the available data from the most recent four quarters.
16. Based on information provided by Orange County Department of Health (OCDOH) and NYSDOH, Respondent failed to comply with the MCL for TTHM and HAA5 during the 2nd and 3rd quarters of 2022, and is, therefore, in violation of 40 C.F.R. §141.64(b).
17. On November 16, 2022, EPA issued Administrative Order, Docket No. SDWA-02-2023-8022, which required Respondent to submit a corrective action plan to resolve the TTHM and HAA5 MCL violations and comply with all public notice requirements specified in 40 C.F.R. Part 141, Subpart Q.
18. By letter dated December 9, 2022, Respondent submitted a corrective action plan which included a compliance schedule with proposed upgrades, including the installation of a granulated activated carbon (GAC), to improve the operation and treatment process.
19. On January 17, 2023, EPA issued Administrative Order, Docket No. SDWA-02-2023-8030 to establish an enforceable schedule for Respondent to comply with the monitoring, reporting and MCL requirements of 40 C.F.R. Part 141, Subpart V and the SDWA.
20. On March 1, 2023, Respondent submitted a response to EPA, however, the requirements of EPA's AO SDWA-02-2030-8030 were not met. Specifically, and among other things, Respondent failed to meet milestone 15 of AO Docket No. SDWA-02-2023-8030 due to its failure to submit to OCDOH design plans and specifications for a GAC system.

III. CONSENT AGREEMENT

22. Section II, Paragraphs 1-21 are re-alleged and incorporated by reference.
23. 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.
24. 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

25. 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 **SEVEN THOUSAND TWO HUNDRED AND SIXTY-THREE DOLLARS (\$7,263.00)**, as stated in Section V below.

V. PAYMENT OF CIVIL PENALTY

26. Respondent shall pay a civil penalty to EPA in the amount of **SEVEN THOUSAND TWO HUNDRED AND SIXTY-THREE DOLLARS (\$7,263.00)**. 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 Postal Service
U.S. Environmental Protection Agency
P.O. Box 979078
St. Louis, MO 63197-9000

OR

FedEx, UPS, DHL
U.S. Environmental Protection Agency
Government Lockbox 979078

1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

The check shall be identified with a notation thereon listing the following: **IN THE MATTER OF LEGOLAND NEW YORK RESORT** and shall bear thereon **Docket Number SDWA-02-2023-8402**. 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: \$7,263.00.
- 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: Legoland New York Resort
- g. Case Number: SDWA-02-2023-8402

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:

Brendan Killian
Assistant Regional Counsel
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) 637-3380

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

27. 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.
28. 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.
29. 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.
30. 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.
31. 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.
32. 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).
33. 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.

- 34. 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.
- 35. 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.
- 36. Respondent consents to service by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.
- 37. Each party hereto agrees to bear its own costs and fees in this matter.

FOR RESPONDENT:

DATE: 8/23/2023

Nicholas Freely Director of Technical Services and Facilities
For Stephanie Johnson, Divisional Director
Legoland New York LLC
420 Harriman Drive
Goshen, New York 10924

FOR COMPLAINANT:

DATE: 08/24/2023

For

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

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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: _____

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

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