

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

**IN THE MATTER OF:**

The Ritz Carlton Resort  
6900 Estate Great Bay  
St. Thomas, Virgin Islands 00802

Proceeding pursuant to Sections 308(a) and  
309(a)(3) of the Clean Water Act, 33 U.S.C.  
§§ 1318(a) and 1319(a)(3)

**RESPONDENT**

**ADMINISTRATIVE COMPLIANCE ORDER**

**CWA-02-2023-3004**

The following Administrative Compliance Order (the “Order”) is issued pursuant to Sections 308(a) and 309(a)(3) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §§ 1318(a) and 1319(a). This authority has been delegated by the Administrator of the United States Environmental Protection Agency (“EPA”) to the Regional Administrator, EPA Region 2, and since further relegated to the Director, Enforcement and Compliance Assurance Division, Region 2, EPA.

**A. LEGAL AUTHORITY**

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, among other things, with the authorization of, and in compliance with, a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
2. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of the EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The Virgin Islands Department of Planning and Natural Resources (“VIDPNR”) is the agency with the authority to administer the federal NPDES program in the Virgin Islands pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b). A Territorial Pollutant Discharge Elimination System (“TPDES”) permit issued by the VIDPNR is required for the discharge of pollutants from point sources to waters of the United States. The EPA maintains concurrent enforcement authority with authorized States for violations of the CWA and permits issued by authorized States thereunder.
3. “State” is defined by Section 502(3) of the CWA, 33 U.S.C. § 1362(3), to include the Virgin Islands (“VI”).
4. “Person” is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), to include an individual, corporation, partnership, association or municipality.
5. “Discharge of a pollutant” is defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12), to include any addition of any pollutant to waters of the United States from any point source.

6. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to include, among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged to water.
7. “Point source” is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to include any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
8. “Navigable waters” are defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), as “waters of the United States, including the territorial seas.” “Waters of the United States” have been further defined to include, inter alia, waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce and tributaries of such waters. 40 C.F.R. § 122.2.
9. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), provides, in relevant part, that the Administrator of EPA may require the owner or operator of any point source to, among other things: establish and maintain such records; make such reports; install, use and maintain such monitoring equipment; sample such effluents; and provide such other information as may reasonably be required to carry out the objective of the CWA.
10. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes the Administrator to issue an order requiring compliance or commence a civil action when any person is found to be in violation of Section 301 of the CWA, 33 U.S.C. § 1311, or in violation of any permit condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

## **B. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Ritz Carlton Resort (“Respondent”) is a corporation and is, therefore, a “person” pursuant to Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
2. Respondent owns and operates the facility located at or near 6900 Estate Great Bay in St. Thomas, U.S. Virgin Islands (the “Facility”).
3. Respondent discharges reverse osmosis brine, a pollutant within the meaning of Section 502 (6) of the CWA, 33 U.S.C. § 1362 (6), from Outfall 002, a point source within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to Great Bay, which is a “navigable water” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2. As such, Respondent discharges pollutants within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).
4. The VIDPNR, under the authority of Section 402(b) of the CWA, 33 U.S.C. § 1342(b), issued TPDES Permit No. VI0040479 (the “Permit”), which authorizes the discharge of reverse osmosis brine to Great Bay via Outfall 002. It also authorizes the discharge of treated wastewater treatment plant (“WWTP”) effluent for land application via Outfall 001. The current version the Permit became effective on June 1, 2019, and is set to expire on May 24, 2024.

5. The Permit requires Respondent to maintain compliance with the effluent limitations, monitoring, and reporting requirements established in Part II of the Permit for Outfalls 001 and 002.
6. Part II.F.2.a of the Permit requires Respondent to submit Discharge Monitoring Reports (“DMRs”) to the U.S. Virgin Islands and EPA electronically in NetDMR no later than the 28<sup>th</sup> day of the month following the completed reporting period.
7. Based on review of data available to EPA, Respondent has failed to submit DMRs for Outfall 002 for the following monitoring periods and parameters:

<u>Monitoring Period</u>	<u>Outfall / Limit Set</u>	<u>Parameter</u>	<u>Value Type</u>	<u>Violation Code*</u>
May-2021	002 - Y	00480 - Salinity	Concentration Maximum	D80
May-2021	002 - Y	70295 - Solids, total dissolved	Concentration Maximum	D80
Apr-2022	002 - A	00556 - Oil & Grease	Concentration Maximum	D80
Apr-2022	002 - A	50050 - Flow, in conduit or thru treatment plant	Quantity Average	D80
Apr-2022	002 - A	00010 - Temperature, water deg. centigrade	Concentration Maximum	D90
Apr-2022	002 - A	00400 - pH	Concentration Maximum	D90
Apr-2022	002 - A	00400 - pH	Concentration Minimum	D90
Apr-2022	002 - A	50050 - Flow, in conduit or thru treatment plant	Quantity Maximum	D90
May-2022	002 - Y	00480 - Salinity	Concentration Maximum	D80
May-2022	002 - A	00556 - Oil & Grease	Concentration Maximum	D80
May-2022	002 - Y	70295 - Solids, total dissolved	Concentration Maximum	D80
May-2022	002 - A	50050 - Flow, in conduit or thru treatment plant	Quantity Average	D80
May-2022	002 - A	00010 - Temperature, water deg. centigrade	Concentration Maximum	D90
May-2022	002 - A	00400 - pH	Concentration Maximum	D90
May-2022	002 - A	00400 - pH	Concentration Minimum	D90
May-2022	002 - A	50050 - Flow, in conduit or thru treatment plant	Quantity Maximum	D90
Jun-2022	002 - A	00556 - Oil & Grease	Concentration Maximum	D80
Jun-2022	002 - A	50050 - Flow, in conduit or thru treatment plant	Quantity Average	D80
Jun-2022	002 - A	00010 - Temperature, water deg. centigrade	Concentration Maximum	D90
Jun-2022	002 - A	00400 - pH	Concentration Maximum	D90
Jun-2022	002 - A	00400 - pH	Concentration Minimum	D90
Jun-2022	002 - A	50050 - Flow, in conduit or thru treatment plant	Quantity Maximum	D90
Jul-2022	002 - A	00556 - Oil & Grease	Concentration Maximum	D80
Jul-2022	002 - A	50050 - Flow, in conduit or thru treatment plant	Quantity Average	D80
Jul-2022	002 - A	00010 - Temperature, water deg. centigrade	Concentration Maximum	D90
Jul-2022	002 - A	00400 - pH	Concentration Maximum	D90
Jul-2022	002 - A	00400 - pH	Concentration Minimum	D90
Jul-2022	002 - A	50050 - Flow, in conduit or thru treatment plant	Quantity Maximum	D90

\*D80 - Required monitoring DMR value overdue; D90 - Limited value overdue

8. Based upon Paragraphs 1 - 7 above, EPA finds that Respondent is in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, and applicable implementing regulations.

### C. ORDERED PROVISIONS

Based upon the foregoing and pursuant to the authority of Section 309(a)(3) of the Act, it is hereby ORDERED that:

1. **Immediately upon receipt of this Order**, a responsible official of the Respondent shall complete and sign the acknowledgment of receipt and return an electronic copy of the signed acknowledgment page to the Chief, Water Compliance Branch, at the email address listed in paragraph E.1, below.
2. **Within thirty (30) calendar days of receipt of this Order**, Respondent shall submit in NetDMR all missing DMRs for Outfall 002 as identified in paragraph B.7, above. Respondent shall continue to submit DMRs in accordance with its Permit. For NetDMR assistance, Respondent may contact Nestor Louis at [louis.nestor@epa.gov](mailto:louis.nestor@epa.gov) or (212) 637-3513.

### D. REQUEST FOR INFORMATION

1. In addition to the abovementioned missing DMRs for Outfall 002, Respondent has also failed to submit DMRs for Outfall 001 for 12 monthly reporting periods and 118 parameters (*see* Attachment 1). Pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), **within thirty (30) calendar days of receipt of this Order**, Respondent is required to submit a written response describing how it has complied or intends to comply with the reporting requirements for Outfall 001 in Part II.F.2.a of its VIDPNR TPDES Permit, and moving forward, how Respondent intends to ensure that all DMRs for both outfalls are timely submitted in NetDMR.

### E. GENERAL PROVISIONS

1. All information or documents required to be submitted by Respondent as part of this Order shall be sent electronically to the following individuals:

Douglas McKenna, Chief  
Water Compliance Branch  
Enforcement and Compliance Assurance Division  
U.S. EPA - Region 2  
[mckenna.douglas@epa.gov](mailto:mckenna.douglas@epa.gov)  
with copy to  
[green.katherine@epa.gov](mailto:green.katherine@epa.gov)

and

Jim Casey, VI Coordinator  
Multimedia Permits and Compliance Branch  
Caribbean Environmental Protection Division  
U.S. EPA – Region 2  
[casey.jim@epa.gov](mailto:casey.jim@epa.gov)

and

Austin Callwood, Director  
Division of Environmental Protection  
VIDPNR  
[austin.callwood@dpnr.vi.gov](mailto:austin.callwood@dpnr.vi.gov)

and

Mary Stiehler, Environmental Program Manager  
Division of Environmental Protection  
VIDPNR  
[mary.stiehler@dpnr.vi.gov](mailto:mary.stiehler@dpnr.vi.gov)

2. Pursuant to 40 C.F.R. § 122.22, all information or documents required to be submitted by Respondent shall be signed by an authorized representative of Respondent, and shall include the following certification:

**“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”**

3. Respondent shall have the opportunity, for a period of 20 days from the date of receipt of this Order, to confer regarding the Ordered Provisions, with the following designated Agency representative:

Douglas McKenna, Chief  
Water Compliance Branch  
Enforcement and Compliance Assurance Division  
U.S. EPA - Region 2  
[mckenna.douglas@epa.gov](mailto:mckenna.douglas@epa.gov)  
(212) 637-4244

4. Respondent has the right to seek immediate federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706. Section 706 of the APA provides the grounds for such review.
5. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, its implementing regulations, or any applicable permit, which remain in full force and effect. This Order is an enforcement action taken by EPA to ensure swift compliance with the CWA. Issuance of this Order shall not be deemed an election by EPA to forego any civil or criminal actions for penalties, fines, imprisonment, or other appropriate relief under the CWA.

6. Notice is hereby given that failure to comply with the terms of the CWA Section 309(a)(3) Compliance Order may result in your liability for civil penalties for each violation of up to \$59,973.00 per day under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R., Part 19. Upon suit by EPA, the United States District Court may impose such penalties if, after notice and opportunity for hearing, the Court determines that you have violated the CWA as described above.
7. Notice is hereby given that failure to comply with the requirements of the CWA Section 308(a) Information Request may result in your liability for civil penalties for each violation of up to \$59,973.00 per day under Section 309(d) of the CWA, as modified by 40 C.F.R. Part 19. Upon suit by EPA, the United States District Court may impose such penalties if, after notice and opportunity for a hearing, the Court determines that you have failed to comply with the terms of the Information Request. You may also be subject to administrative remedies for a failure to comply with the Information Request as provided by Section 309 of the CWA.
8. If any provision of this Order is held by a court of competent jurisdiction to be invalid, any surviving provisions shall remain in full force and effect.
9. This Order shall become effective upon the date of execution by the Director, Enforcement and Compliance Assurance Division.

Dated: 12/07/2022 Signed: \_\_\_\_\_  
*For* Dore LaPosta, Director  
Enforcement and Compliance Assurance Division

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1318(a) and 1319(a)(3)

**RESPONDENT**

**ADMINISTRATIVE COMPLIANCE ORDER**

**CWA-02-2023-3004**

**ACKNOWLEDGMENT OF RECEIPT OF  
ADMINISTRATIVE COMPLIANCE ORDER**

I, \_\_\_\_\_, an authorized representative of the Respondent,

with the title of, \_\_\_\_\_, do hereby acknowledge the receipt of

a copy of the ADMINISTRATIVE COMPLIANCE ORDER, CWA-02-2023-3004.

DATE: \_\_\_\_\_

SIGNED: \_\_\_\_\_