

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

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 MAY 12 AM 11:04
REGIONAL HEARING
CLERK

IN THE MATTER OF:

U.S. Department of Interior,

Respondent

Mark Hardgrove, Superintendent
Virgin Islands National Park
1300 Cruz Bay Creek
Visitor Center
St. John, Virgin Islands, 00830

PWS ID No. VI0000557,

Facility

CONSENT AGREEMENT
AND
FINAL ORDER

Docket No.

SDWA-02-2009-8401

CONSENT AGREEMENT

This Consent Agreement ("CA") is entered into by the Director of the Division of Enforcement and Compliance Assistance, Region 2, United States Environmental Protection Agency ("EPA" or "Complainant") and the United States National Parks Service, located in St. John, Virgin Islands ("Respondent"), pursuant to Section 1447 of the Safe Drinking Water Act ("SDWA"), as amended, 42 U.S.C. § 300j-6(b), and in accordance with 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," 64 Fed. Reg. 40137-40190 (July 23, 1999) (Part 22). The authority to issue this order has been duly delegated to the Director of the Division of Enforcement and Compliance Assistance of EPA Region 2.

This CA and the Final Order (collectively "CAFO"), resolve violation of the Arsenic Rule requirement pursuant to 40 CFR § 141.23(c)(1), 42 U.S.C. § 300j-6, with respect to the Cinnamon Bay Camp Ground public water system located in St. John, Virgin Islands. Section 1447 of the SDWA, 42 U.S.C. § 300j-6, authorizes EPA to take an enforcement action whenever it determines that a Federal agency is in violation of any requirement of the SDWA, EPA's regulations thereunder, or any regulation of a state drinking water program which has been authorized by EPA. Pursuant to 42 U.S.C. § 300j-6(a) & (b), EPA may issue a penalty order assessing a penalty against any Federal agency that owns or operates any public water system which violates an applicable requirement of the statute. Violators are subject to, inter alia, the assessment of a civil penalty of not more than \$27,500 per day per violation pursuant to 42 U.S.C. § 300j-6 (b)(2).

The Virgin Islands Department of Planning and Natural Resources (“VIDPNR”) administers the Public Water Supply Supervision Program in the U.S. Virgin Islands pursuant to Section 1413 of the SDWA, 42 U.S.C. § 300g-2. EPA granted approval of primary enforcement authority to the VIDPNR on September 22, 1979. However, the VIDPNR has not yet obtained primary enforcement responsibility for the Arsenic Rule. Therefore, EPA has primary responsibility for enforcement of the Arsenic Rule.

On January 22, 2001, EPA promulgated the Arsenic Rule to improve public health by reducing exposure to arsenic in drinking water. The Arsenic Rule revised the arsenic maximum contaminant level (“MCL”), and lowered it from 50 micrograms per liter (“ug/L”) to 10 micrograms per liter (“ug/L”). All community water systems (“CWS”) and non-transient, non-community water systems (“NTNCWS”) must comply with the arsenic monitoring requirements (40 C.F.R. §141.23) as well as the arsenic MCL requirements (40 C.F.R. §141.62(b)(16)).

The effective date of the Arsenic Rule is February 22, 2002 (40 CFR §141.6(j)), however, the revised MCL compliance elements of the rule became effective on January 23, 2006. In accordance with the EPA/Virgin Islands monitoring plan, ground water systems were required to collect samples to comply with the sampling requirements for arsenic in the three year compliance period beginning January 1, 2005 and concluding on December 31, 2007. This 2005-2007 compliance period is the initial monitoring period under the revised MCL.

Ground water systems may use grandfathered data collected after January 1, 2005 to satisfy the revised MCL sampling requirements during the initial monitoring period. The grandfathered data must report results from analytical methods approved for use by the final Arsenic Rule (e.g., the method detection limit must be substantially less than the revised MCL of 10 µg/L). If the grandfathered data are used to comply with the 2005-2007 compliance period and the analytical result is greater than 10 µg/L, that system will be in violation of the revised MCL. If ground water systems do not use grandfathered data, then these systems must complete monitoring for arsenic by December 31, 2007 to demonstrate compliance with the revised MCL (40 CFR §141.6(k)).

During the initial 2005-2007 compliance period, ground water systems were required to take one sample at each entry point to the distribution system after any application of treatment, or in the distribution system which is representative of each well after treatment. All systems were required to begin monitoring for arsenic, or submit data that meets grandfathering requirements, to determine compliance with the 10 ppb arsenic MCL by January 23, 2006.

GENERAL PROVISIONS

1. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO, except as provided in Paragraph 1, above.

3. Respondent hereby stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO.
4. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached Final Order ("FO"), or the enforcement of the CAFO.
5. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in this CA and any right to appeal the accompanying FO.
6. Respondent consents to the issuance and terms of this CAFO as set out herein, including the assessment and payment of the stated civil penalties. Compliance with the terms of this CAFO shall resolve the violations alleged herein
7. Respondent consents to the issuance of this CAFO, and agrees to comply with its terms and conditions.
8. Each party shall bear its own costs and attorney's fees.
9. Respondent also hereby expressly waives its right to confer with the Administrator under SDWA § 1447(b)(3), 42 U.S.C. § 300j-6(b)(3)..
10. The person signing this CA on behalf of the Respondent certifies to EPA by his or her signature herein that Respondent, as of the date of its execution of this CA, is in compliance with the provisions of the Safe Drinking Water Act, its implementing regulations and the Virgin Islands federally authorized Safe Drinking Water Program at the Cinnamon Bay Facility referenced herein. This certification is based on the personal knowledge of the signer or an inquiry of the person or persons responsible for the Facility's compliance with the SDWA.
11. The provisions of this CAFO shall be binding upon EPA and Respondent.
12. This CAFO shall not relieve Respondent of its obligation 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, nor does this CAFO constitute a waiver, suspension or modification of the requirements of 40 CFR §141.23, 42 U.S.C. § 300j-6, or any regulations promulgated thereunder.
13. Complainant shall have the right to institute further actions to recover appropriate relief if Complainant obtains evidence that the information provided and/or representations made by Respondent to EPA regarding matters at issue in the CAFO are false or, in any material respect, inaccurate.

FACTUAL ALLEGATIONS AND CONCLUSIONS OF LAW

14. Respondent is a "person" as that term is defined in SDWA § 1401(12), 42 U.S.C. § 300f(12), and 40 C.F.R. § 141.2.
15. Respondent owns or operates a "public water system" and is a "supplier of water" within the meaning of SDWA § 1401(5), 42 U.S.C. § 300f(5). 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.
16. Respondent provides piped water for human consumption and regularly serves a population of at least 25 individuals for over 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.
17. According to SDWA § 1447(a), 42 U.S.C. § 300j-6(a), each department, agency, or instrumentality of the executive branch of the federal government 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 person is subject to such requirements.
18. Respondent owns or operates a public water system and is a department, agency, or instrumentality of the executive branch of the federal government. Respondent is therefore subject to and must comply with 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 14.
19. 40 C.F.R. § 141.23 requires all community water systems (CWSs) and non-transient, non-community water systems (NTNCWSs) to comply with the arsenic requirements.
20. 40 C.F.R. § 141.23(a)(1) requires ground water systems to take a minimum of one sample at every entry point to the distribution system after any application of treatment or in the distribution system at a point which is representative of each well after treatment (hereafter called a "Sampling Point"). The system is required to take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.
21. 40 C.F.R. § 141.23(c)(1) requires ground water systems to take one sample for arsenic every three years under the revised MCL. The initial three year compliance monitoring period began on January 1, 2005 and concluded on December 31, 2007.
22. 40 C.F.R. § 141.62(b) requires all community water systems (CWSs) and non-transient non-community water systems (NTNCWSs) to conduct monitoring for arsenic to determine compliance with the maximum contaminant level of 10 micrograms per liter (ug/L) as specified in 40 C.F.R. § 141.62(b)(16) beginning January 23, 2006.

23. Respondent's water system utilizes a ground water source and, therefore, was required to comply with 40 C.F.R. § 141.23 beginning January 23, 2006. Pursuant to 40 C.F.R. § 141.23, Respondent was required to begin monitoring for arsenic to determine compliance with the 10 micrograms per liter (ug/L) as specified in 40 C.F.R. § 141.62(b)(16).
24. Based on the information in EPA's files, Respondent has failed to conduct monitoring for arsenic.

COUNT # 1
FAILURE TO MONITOR FOR ARSENIC

The allegations in paragraphs 1-24 in this CA/FO are incorporated by reference.

25. Pursuant to 40 C.F.R. § 141.23, an owner of a NTNCWS required to monitor for arsenic.
26. Based on the information provided by the VIDPNR, Respondent has failed to conduct and report the results of arsenic monitoring
27. Therefore, Respondent violated 40 C.F.R. § 141.23.

PAYMENT OF CIVIL PENALTY

28. In settlement of Complainant's claims for civil penalties for the violation alleged in this CA, Respondent agrees to pay a civil penalty in the amount of **Five Hundred Dollars (\$500.00)**. Such payment shall be made by cashier's or certified 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:

U.S. 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 NATIONAL PARKS SERVICE CINNAMON BAY CAMP GROUND**, and shall bear thereon the **Docket Number SDWA-02-2009-8401**. Payment of the penalty must be received at the above address on or before forty-five (45) calendar days after the Effective Date of this CAFO (the "due date").

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

- a. Amount of Payment
- 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: National Parks Service Cinnamon Bay Camp Ground
- g. Case Number: SDWA-02-2009-8401

Such EFT must be received on or before 45 calendar days after the Effective Date of this CAFO.

Whether the payment is made by check or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Sally Dalzell
Federal Facilities Enforcement Office
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
MC# 2261A
Washington DC, 20460

and

Karen Maples, Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway – 16th Floor
New York, NY 10007-1866

- i. 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.
 - ii. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. § 162(f).
29. 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.
30. Issuance of the Consent Agreement and Final Order 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 Sections 1414 of the Act, 42 U.S.C. § 300g-3.

AUTHORITY TO BIND THE PARTIES

31. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into the terms and conditions of this Consent Agreement and bind the Respondent thereto.

FULL AND FINAL SATISFACTION

32. Pursuant to 40 C.F.R. § 22.18(c), this CA/FO constitutes a full and final resolution of Respondents' liability for Federal civil penalties pursuant to 1447(b) of SDWA, 42 U.S.C. § 300j-6 for the specific violations and matters alleged in this Consent Agreement.

RESERVATION OF RIGHTS

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 Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under SDWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CA/FO, following its filing with the Regional Hearing Clerk.

ADEQUACY OF FUNDS; ANTIDEFICIENCY ACT

34. Failure to obtain adequate funds or appropriations from Congress does not release Respondents from their obligation to comply with SDWA, the applicable regulations thereunder, or with this CA/FO. Nothing in this CA/FO shall be interpreted to require obligation or payment of funds in violation of the Antideficiency Act, 31 U.S.C. § 1341.

OTHER APPLICABLE LAW

35. Nothing in this CA/FO shall relieve Respondents of any duties otherwise imposed on them by applicable federal, state or local law and/or regulations.

ENTIRE AGREEMENT

36. This Consent Agreement and the attached Final Order constitute the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon

between the parties other than those expressed in this Consent Agreement and the attached Final Order.

EFFECTIVE DATE

37. Respondent consents to service upon Respondent by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.
38. This CAFO shall become effective upon filing of the CAFO with the Regional Hearing Clerk.

FOR THE RESPONDENT:

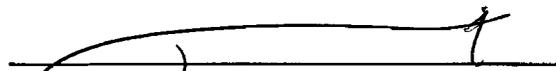
Dated this 17 day of: FEB, 2009



Mark Hardgrove, Superintendent
Virgin Islands National Park
1300 Cruz Bay Creek
Visitor Center
St. John, Virgin Islands, 00830

FOR THE COMPLAINANT:

Dated this 20th day of: MARCH, 2009



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

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 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: March 27, 2009


George Pavlou
Acting Regional Administrator
United States Environmental Protection Agency
Region 2
290 Broadway
New York, New York 10007

To: Mark Hardgrove, Superintendent
Virgin Islands National Park
1300 Cruz Bay Creek
Visitor Center
St. John, Virgin Islands, 00830

Docket No.: SDWA-02-2009-8401